

Exhibit I

<p style="text-align: right;">Page 1</p> <p>1 UNITED STATES DISTRICT COURT FOR THE 2 WESTERN DISTRICT OF MISSOURI 3 CENTRAL DIVISION 4 SHONDEL CHURCH, et al.,) 5) 6 Plaintiffs,) 7 vs.) Case No. 8) 17-04057-CV-C-NKL 9) 10 STATE OF MISSOURI, et al.,) 11) 12 Defendants.) 13 14 15 16 17 VIDEOTAPED DEPOSITION OF EDWARD GUINN 18 TAKEN ON BEHALF OF THE PLAINTIFFS 19 DECEMBER 12th, 2017 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 3</p> <p>1 IN THE UNITED STATES DISTRICT COURT 2 WESTERN DISTRICT OF MISSOURI 3 CENTRAL DIVISION 4 SHONDEL CHURCH, et al.,) 5) 6 Plaintiffs,) 7 vs.) Case No. 8) 17-04057-CV-C-NKL 9) 10 STATE OF MISSOURI, et al.,) 11) 12 Defendants.) 13 14 15 VIDEOTAPED DEPOSITION OF EDWARD GUINN, 16 produced, sworn, and examined on the 12th day of 17 December, 2017, between the hours of eight o'clock in 18 the morning and twelve o'clock in the afternoon of 19 that date at the law offices of ALARIS LITIGATION 20 SERVICES, 2511 Broadway Bluffs, Suite 201, Columbia, 21 Missouri 65201, before LISA BALLALATAK, a Certified 22 Court Reporter within and for the State of Missouri, 23 in a certain cause now pending IN THE UNITED STATES 24 DISTRICT COURT, WESTERN DISTRICT OF MISSOURI, CENTRAL 25 DIVISION, wherein SHONDEL CHURCH, et al. are the Plaintiffs and STATE OF MISSOURI, et al. are the Defendants.</p>
<p style="text-align: right;">Page 2</p> <p>1 INDEX OF EXAMINATION 2 3 Direct Examination by Mr. Scherzer 6 4 Cross-Examination by Mr. Ramsey 102 5 Cross-Examination by Ms. Shipma 122 6 Redirect Examination by Mr. Scherzer 123 7 8 INDEX OF EXHIBITS 9 EXHIBITS: 10 Exhibit No. 29 (Judge Hayes Letter) 41 11 Exhibit No. 30 (Judge Tucker Letter) 53 12 Exhibit No. 31 (Judge Tschannen Letter) 54 13 14 Reporter's Note: The original exhibits were attached 15 to the original transcript. 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES 2 For the Plaintiffs: 3 MR. AARON SCHERZER 4 ORRICK, HERRINGTON & SUTCLIFFE, LLP 5 51 West 52nd Street 6 New York, New York 10019 7 (212) 506-5000 8 ascherzer@orrick.com 9 10 MR. ANTHONY TARTAGLIO 11 ORRICK, HERRINGTON & SUTCLIFFE, LLP 12 1000 Marsh Road 13 Menlo Park, California 94025 14 (650) 614-7478 15 ttartaglio@orrick.com 16 17 For the Defendants MSPD System: 18 MS. JACQUELINE D. SHIPMA 19 MISSOURI STATE PUBLIC DEFENDER SYSTEM 20 1000 W Nifong Boulevard, Suite 100 21 Columbia, Missouri 65203 22 573-777-9977 23 24 For The State of Missouri and 25 Governor Greitens: MR. STEVEN ALAN RAMSEY ASSISTANT ATTORNEY GENERAL MISSOURI ATTORNEY GENERAL'S OFFICE P. O. Box 899 221 West High Street Jefferson City, Missouri 65102 (573) 751-2590 steven.ramsey@ago.mo.gov Also present: Mr. Chris Tobin, Videographer The Court Reporter: MS. LISA BALLALATAK, CCR</p>

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<p style="text-align: right;">Page 5</p> <p>1 (The deposition commenced at 8:38 a.m.) 2 VIDEOGRAPHER: We're on the record. 3 Today's date is December 12, 2017, and the time is 4 8:38 a.m. This is the deposition of Ed Guinn in the 5 matter of Shondel Church et al. v. State of 6 Missouri, et al., Case No. 1704057-CV-C-NKL in the 7 United States District Court for the Western 8 District of Missouri, Central Division. This 9 deposition is being held at Alaris Litigation 10 Services at 2511 Broadway Bluffs Drive, Columbia, 11 Missouri. The court reporter's name is 12 Lisa Ballalatak. My name is Chris Tobin. I'm the 13 legal videographer. We are with Alaris Litigation 14 Services. 15 Would the attorneys present please state 16 their name for the record. 17 MR. SCHERZER: Aaron Scherzer for the 18 plaintiffs. 19 MR. TARTAGLIO: Anthony Tartaglio also for 20 the plaintiffs. 21 MR. RAMSEY: Steven Alan Ramsey for the 22 State of Missouri and Governor Greitens. 23 MS. SHIPMA: Jacqueline Shipma for the 24 MSPD defendants. 25 VIDEOGRAPHER: Would the court reporter</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Okay. Great. So you're obviously very 2 familiar, then, with the ground rules of depositions 3 and how everything works. I'll just go over it 4 quickly -- not to bore you with things you already 5 know, but just for the record. I'm going to ask you 6 questions relevant to this case; you'll do your best 7 to answer them truthfully and accurately, and 8 remember that, of course, your testimony here is 9 under oath. Does that all make sense? 10 A. Yes. 11 Q. There's a court reporter here, obviously, 12 transcribing the deposition. If you could answer 13 verbally rather than with hand gestures or 14 headshakes so the court reporter can record your 15 responses, that would be very helpful. Please just 16 wait for me to finish my question before answering, 17 and I'll, of course, wait for you to finish your 18 answer before asking a follow-up question. Any of 19 the attorneys here may have an objection. Unless 20 they direct you not to answer, please just go ahead 21 and answer the question. Of course, if you don't 22 understand the question that I'm asking, feel free 23 to just let me know that, and I'll rephrase or 24 explain. You can take a break whenever you need it. 25 Just let me know. The only thing I ask is if</p>
<p style="text-align: right;">Page 6</p> <p>1 please swear in the witness. 2 EDWARD GUINN, 3 of lawful age, being produced, sworn, and examined on 4 behalf of the Plaintiffs deposes and says: 5 DIRECT EXAMINATION 6 BY MR. SCHERZER: 7 Q. So, Mr. Guinn, my name is Aaron Scherzer. 8 I represent the plaintiffs in this case. Other than 9 just when I introduced myself five minutes ago, have 10 we ever met before? 11 A. No. 12 Q. Have you ever been deposed before? 13 A. Yes. 14 Q. How many times? 15 A. I think twice. 16 Q. And on what kind of cases? 17 A. They were civil litigation cases. 18 Q. Okay. Related to your job at the MSPD 19 or ... 20 A. No. 21 Q. Okay. And have you taken depositions 22 yourself? 23 A. Yes. 24 Q. About how many, ballpark? 25 A. More than a hundred.</p>	<p style="text-align: right;">Page 8</p> <p>1 there's a question pending, just answer that 2 question before we take a break. 3 Does that all make sense? 4 A. Yes. 5 Q. Great. How did you prepare for this 6 deposition, Mr. Guinn? 7 A. I reviewed the case numbers on cases 8 initiated in the last fiscal year and in this fiscal 9 year so that I would have some familiarity with the 10 case numbers that are coming through our office, and 11 that's really about all I looked at. I did meet 12 with counsel to discuss having my deposition taken, 13 but that's all of the preparation I've done. 14 Q. Okay. When you say with "counsel," you 15 mean with Ms. Shipma? 16 A. Correct. 17 Q. Did you bring any documents with you here 18 today? 19 A. No. 20 Q. Okay. Mr. Guinn, by whom are you 21 employed? 22 A. By the Missouri State Public Defender. 23 Q. And what's your current title? 24 A. District defender of Area 14. 25 Q. Okay. And how long have you been in that</p>

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1 position?
 2 A. Three years.
 3 Q. Okay. Since 2014?
 4 A. Approximately.
 5 Q. Okay. And before that what -- what
 6 position did you hold?
 7 A. I was an assistant public defender.
 8 Q. In which office?
 9 A. In the Area 14 office.
 10 Q. In the Area 14? Okay. And when did you
 11 join that office?
 12 A. In 2011.
 13 Q. From 2011 to 2014, you were assistant
 14 public defender in Area 14, and from 2014 to the
 15 present, you're the district defender in that
 16 office?
 17 A. Correct.
 18 Q. And before 2011, what was your job?
 19 A. I was a partner in the law firm of Ford
 20 Parshall & Baker.
 21 Q. Sorry. Can you spell those last two
 22 names?
 23 A. Parshall is P-a-r-s-h-a-l-l, and Baker is
 24 B-a-k-e-r.
 25 Q. Okay. And for what time period were

1 A. They were lawyers here in Columbia,
 2 Missouri.
 3 Q. Got it. Okay. So you worked for them for
 4 a year, and then you joined Ford Parshall & Baker as
 5 an associate?
 6 A. Correct.
 7 Q. And so then you said you retired in 2011
 8 from Ford Parshall & Baker; is that right?
 9 A. Uh-huh.
 10 Q. And what made you join the Area 14
 11 assistant -- the Area 14 office as an assistant
 12 public defender at that time?
 13 A. I did -- I did not like being retired, and
 14 I had always wanted to do more public interest type
 15 law, and I've always practiced criminal law, so
 16 there -- there was an opening, and I applied, and
 17 I'm very pleased that I was selected to work there.
 18 Q. So you decided to come out of retirement
 19 to become a public defender?
 20 A. I did.
 21 Q. And for how many months were you retired,
 22 approximately?
 23 A. I'm guessing maybe four.
 24 Q. Okay. So you realized pretty quickly that
 25 you -- retirement wasn't for you?

1 you --
 2 A. I started working at Ford Parshall &
 3 Baker, I believe, in 1992 or '3 and retired from
 4 there in 2011.
 5 Q. And were you a partner during that entire
 6 time period?
 7 A. Not the entire time period. I --
 8 honestly, today, I couldn't tell you when I became a
 9 partner. I'm guessing it would have been 2002 or
 10 '3.
 11 Q. Okay. And before you worked -- you were
 12 first -- I presume before that, you were an
 13 associate?
 14 A. Yes.
 15 Q. And so before you joined Ford Parshall &
 16 Baker as an associate in 1992, what job did you
 17 have?
 18 A. When I graduated from law school in 1991,
 19 I worked for Cullen Klein & Milt Harper, and went
 20 from Milt Harper's office to Ford Parshall & Baker.
 21 So I was with Cullen & -- I worked as a law clerk
 22 while I was in law school, and then was in their
 23 office a year, year and a half.
 24 Q. And who are those -- Cullen Klein & Milt
 25 Harper, just for the record.

1 A. I had some assistance from my wife in
 2 making that decision.
 3 Q. Fair enough. And so -- thank you for
 4 explaining that.
 5 So during the time that you were the --
 6 the almost 20 years that you were at Ford Parshall &
 7 Baker, you were practicing criminal law?
 8 A. I did criminal law and civil litigation.
 9 Q. Some of each?
 10 A. Yes.
 11 Q. And in terms of the criminal law, was it
 12 all kinds of criminal law or anything in particular?
 13 A. I think it would best be described as a
 14 general practice in a small town. I would classify
 15 Columbia as a small town. I did not do any murder
 16 cases -- what I would classify as serious felony
 17 offenses. We did do the lower-level felony and
 18 misdemeanor offenses.
 19 Q. Got it. Okay. And was all of that work
 20 in the state courts in Columbia or was it around the
 21 state or ...
 22 A. Civil litigation was all over the state.
 23 The criminal representation was primarily in Boone,
 24 Randolph, and Cooper County, which would be central
 25 Missouri.

<p style="text-align: right;">Page 13</p> <p>1 Q. Got it. Okay. So you mentioned you work 2 in the -- or you're the district defender in the 3 Area 14 office. Which counties are included in 4 Area 14? 5 A. Randolph, Howard, Macon, Linn, and 6 Chariton Counties. 7 Q. Okay. And that -- well, I'll come back to 8 that in a second. 9 That covers a fair amount of geographical 10 distance; is that right -- those five counties? 11 A. Yes. 12 Q. Okay. And your office represents people 13 in each of those five counties at any given moment; 14 is that correct? 15 A. Correct. 16 Q. And are the courthouses in -- is there 17 one -- how many courthouses do the attorneys in your 18 office practice in? 19 A. Each primary county -- Randolph, Macon, 20 Chariton, Howard, and Linn County, each one of those 21 counties has one courthouse. They're all rural 22 counties. The courthouses are situate at the county 23 seat for each county. 24 Q. Okay. And where is your office located? 25 A. Our office is located in Moberly,</p>	<p style="text-align: right;">Page 15</p> <p>1 when there was a specific allocation for conflict 2 cases, what percentage of your docket was conflict 3 cases, approximately? 4 A. I don't think I -- I can't give you a 5 number because I've never really looked at that 6 number. I can tell you anecdotally that depending 7 on where the conflict came from -- in other words, 8 from Livingston County, you would average 9 approximately five to ten conflict cases all of the 10 time. Adair County would be generally less, maybe 11 five on average. 12 Q. Okay. So given -- does that geographical 13 distance create additional -- putting aside for the 14 moment the conflict cases but just the geographical 15 distance that your office has to cover that you just 16 described, does that create any obstacles for you or 17 your line attorneys' representation of clients? 18 A. Well, certainly, it involves more time 19 because of the travel. It does not just include 20 going to court, because the clients themselves live 21 in smaller rural counties -- Linn County, for 22 example. Our clients come from towns of Brookfield 23 and Marceline, who are very small. And, generally, 24 the clients don't have adequate transportation, as a 25 general rule, so it requires that the attorney go</p>
<p style="text-align: right;">Page 14</p> <p>1 Missouri. 2 Q. Okay. And the furthest -- what is the 3 furthest courthouse from your office? 4 A. Well -- 5 Q. Of the five that you practice in. 6 A. Of the primary counties, Linn County -- 7 the courthouse is located in Linneus. That's 8 approximately a 150-mile round trip from our office. 9 Q. Got it. 10 A. There are -- and just to expand slightly, 11 there are additional travel requirements because of 12 changes of venue and conflict representation in 13 other counties. The farthest counties we service, 14 as far as conflicts are concerned, we go to 15 Chillicothe to the west and Kirksville to the north. 16 Chillicothe is an additional approximately 30 miles 17 from Linneus, so it's about a 180-mile round trip, 18 maybe a little more. 19 Q. And have those conflict cases slowed down 20 as a result of the recent budget allocation for 21 conflict cases? 22 A. Yes, they have. We still have some cases 23 that are still being resolved, but it has 24 significantly reduced in the last year. 25 Q. Okay. Prior to this most recent year,</p>	<p style="text-align: right;">Page 16</p> <p>1 to -- typically, would go to the courthouse in 2 Linneus or the library in Brookfield to actually 3 meet with clients to try and accommodate their 4 ability to travel and meet with their lawyer. It 5 gets a little more complicated with clients that are 6 in custody because Linn County does not have their 7 own jail facility, so they house our clients and 8 other -- that are in custody in other jails. It may 9 be in Macon or it may be in Keytesville, Missouri, 10 or it can be as far west as Pattonsburg, Missouri, 11 which is about an hour and 45 minutes to two-hour 12 drive from our office. 13 Q. Okay. And in those -- so you mentioned a 14 few places. The -- even just putting aside for a 15 second the individuals who are in custody, but the 16 individuals who are not in custody and the 17 individual -- the attorneys in your office need to 18 meet with them at -- you mentioned the library or 19 the courthouse. Are there confidential places there 20 where your attorneys can meet with clients? 21 A. Yes. Yes. 22 Q. And are there confidential places -- now, 23 turning to those who are in custody, are there 24 confidential places where your attorneys can meet 25 with clients who are in custody in those areas?</p>

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1 A. The county jails do have confidential
2 meeting areas.

3 **Q. Okay. And just while we're on the topic**
4 **of client communication, what about phone calls for**
5 **those who are -- for those of your clients who are**
6 **incarcerated? Do they have ready access to phone**
7 **calls to your office?**

8 A. Typically, no. There is -- there are some
9 exceptions to that in a couple of the counties. The
10 typical arrangement in the jails in central Missouri
11 are that they have a pay-to-call system that is not
12 secure; it's recorded by the sheriff's office. It
13 also requires our clients to spend anywhere from \$2
14 to \$5 per call for them to call out -- to call our
15 office, if they're in custody, and they simply can't
16 afford that.

17 **Q. And even if they could afford it, it would**
18 **be a recorded phone call and not a confidential**
19 **attorney-client communication?**

20 A. That's correct. And most of the
21 facilities that we deal with do not have the ability
22 for us to call in through a secure line to speak
23 with our clients.

24 **Q. Okay. So if for those -- speaking now to**
25 **those of your clients who are in custody, if your --**

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1 **in a minute. Can you describe your oversight and**
2 **supervision of the attorneys in your office, in**
3 **terms of how frequent it is, what that looks like?**

4 A. Since we are a smaller rural office, we
5 have six total lawyers, including myself. Since
6 we're a smaller office, we have what I would call
7 more of an open-door policy, so far as the
8 attorney's access to me. We're all -- since we're
9 so close in proximity to each other -- I mean, my
10 attorneys come in and ask me questions, you know, as
11 they have them daily -- sometimes more than once
12 daily. We also -- as far as contact with the
13 attorneys, we have staff meetings monthly where we
14 look at cases, talk about cases, we try to have a
15 component of reviewing current decisions that may
16 have come out of the court of appeals and also
17 discussions of problems that they are having either
18 with their caseload numbers or just clients and
19 cases in general.

20 **Q. Got it. So it sounds like at least one of**
21 **the topics that comes up fairly frequently is**
22 **caseload and workload is that fair to say?**

23 A. Correct.

24 **Q. And that's both in the monthly meetings**
25 **and in your individual contact with the**

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1 **if you or your attorneys want to have confidential**
2 **communication with them, you need to visit them in**
3 **prison; you don't have another means of**
4 **communicating with them?**

5 A. Correct.

6 **Q. Okay. And, obviously, as you described,**
7 **that requires sometimes quite lengthy travel times**
8 **in order to make those visits?**

9 A. Depending on where the individual is being
10 held, certainly, there -- it has -- the lawyer has
11 to leave our office and drive to the jail to meet
12 with them.

13 **Q. And it could be for up to a two-hour round**
14 **trip?**

15 A. That would be the longest drive time.

16 **Q. Okay. So, Mr. Guinn, I want to ask you --**
17 **you're a district defender, as you've described.**
18 **Tell me about your day-to-day responsibilities.**

19 A. Well, I'm responsible for the running of
20 the office, the supervision of the assistant public
21 defenders that are in my office and the office
22 staff. I also carry a caseload, so I have
23 responsibilities of representing clients and meeting
24 and maintaining contact with my clients.

25 **Q. Okay. And I'll come back to your caseload**

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1 **line attorneys in your office?**

2 A. Yes. I send an e-mail -- or try to send
3 an e-mail out once a week talking to -- you know,
4 asking, Do you have too many cases? Where are you
5 at in the process of -- you know -- and, also,
6 looking at the new applications that are coming in,
7 trying to keep some idea of how many cases each
8 individual -- each lawyer has and, kind of more
9 importantly, what kind of cases they have.

10 **Q. And when you say "what kind of cases," do**
11 **you mean what class, in terms of seriousness of**
12 **cases?**

13 A. Yes. I think there -- I think it's
14 important that we keep a handle on the -- how many
15 serious felony offenses each lawyer has in their
16 inventory of cases because of the time that's
17 required to effectively represent someone in a
18 serious felony case.

19 **Q. Got it. And when you say you send an**
20 **e-mail once a week, do you mean to the other five**
21 **attorneys in your office?**

22 A. Yes.

23 **Q. Is that a group e-mail or an individual**
24 **e-mail to each of them?**

25 A. It's a group.

5 (Pages 17 to 20)

1 **Q. Okay. And do each of them respond just to**
2 **you or to everyone?**

3 A. Just -- no. Just to me.

4 **Q. Okay. So you ask them, Just let me know**
5 **what you're --**

6 A. I ask them to let me know how -- if you've
7 had too many cases, if you need to have some
8 assistance in the current caseload you have, or if
9 you're in a position to be able to take new cases.

10 **Q. And do you ask them, Are you in a position**
11 **to take new cases, like, say, for this upcoming week**
12 **or ...**

13 A. Yes.

14 **Q. Okay. And what is typically -- I'm sure,**
15 **obviously, it depends week by week, since you're**
16 **sending this every week, but what is typically the**
17 **response from your attorneys?**

18 A. For the most part, I think the -- well,
19 for the most part, the response is that, I'm okay.
20 From time to time, lawyers will say, you know, I've
21 got a lot on my plate, I need -- you know, I need
22 some -- not be assigned some new cases. It
23 really -- it's not something that you can determine,
24 this is going to happen every week. There are other
25 factors. How many cases are the prosecutors filing?

1 **Q. That's the gist of it?**

2 A. That's the gist of it. Even having them
3 say that, it's not that I don't trust their
4 judgment, but I do look at their numbers because I
5 think it's human nature not to want to admit that
6 you have more than you can handle or more than you
7 can do.

8 **Q. Is it also fair to say -- I mean, since**
9 **it's such a small office, and it sounds like, you**
10 **know, a pretty tight-knit office, given the close**
11 **proximity you mentioned before, that the**
12 **line attorneys in your office realize that if they**
13 **say they can't take cases for a given week, that's**
14 **putting cases on to either you or another attorney**
15 **in your office?**

16 A. Sure. I understand that.

17 **Q. So there's not some -- if they say, I'm**
18 **not available to take a case, there's not some**
19 **knight in shining armor who can come and do**
20 **something with that case, other than someone in your**
21 **office. Is that right?**

22 A. Correct.

23 **Q. Okay. Do you think that may be part of**
24 **the reason why they often say -- or some -- you**
25 **know, in some frequency say that they are available**

1 I mean, there's -- so it's kind of the dynamic. And
2 it also changes if -- you know, if a murder case
3 comes in the door, that changes how many cases an
4 individual lawyer can take at one time.

5 **Q. Got it. Understood. And if someone says**
6 **they are unable to take cases for any -- for either**
7 **the next week or another time period for -- a longer**
8 **time period, what actions, if any, do you take?**

9 A. Well, we talk to other lawyers. I look at
10 their case numbers, I look at how many cases each
11 person -- each lawyer in our office has. I will ask
12 other lawyers, Are you free to take the case? It
13 sometimes depends on where it is. Since we have
14 multiple counties that are a fairly good distance
15 between courthouses, we can't always assign a case
16 to another lawyer because of conflicting law days
17 and because of the distances, they can't get from
18 one court to another court to cover a case. Then,
19 ultimately, I may take the case, if no one else is
20 available.

21 **Q. So when you said that -- at least a fair**
22 **amount of the time, your attorneys respond, I'm**
23 **okay, do you mean that they say, I'm okay to take**
24 **more cases for this upcoming week? Is that --**

25 A. Well, yes. I mean, that's --

1 **to take at least some more cases for that upcoming**
2 **time period?**

3 A. I think that the lawyers in my office are
4 very dedicated, and, certainly, they want to do
5 their job and they're very diligent in how they do
6 their job. And, again, as I said, I think it's
7 human nature not to want to say, I can't -- I can't
8 work as hard as someone else. There again, that's
9 why I look at their cases and their case types so
10 that they know that it's not a negative action if a
11 case is assigned to someone else, it's because
12 we're -- we need to do the best for the client --
13 what's in the client's best interest.

14 **Q. So is it correct, then, that at least some**
15 **of the time when someone says, I am able to take on**
16 **some more cases for this week, you look at their**
17 **caseload and determine that actually they aren't**
18 **able to in order to provide effective representation**
19 **for a client?**

20 A. And that would be my opinion, of course.

21 **Q. Right.**

22 A. Because I look at them, and if the
23 combination of the type of cases, the location, and
24 the number of cases are such that I think they need
25 help, I'm going to assign it to someone else.

<p style="text-align: right;">Page 25</p> <p>1 Again, that's my -- that's my best judgment of the 2 situation as it is at that time. Again, it's very 3 dynamic, because two or three days later, those 4 numbers may change.</p> <p>5 Q. Got it. Understood. And is it correct -- 6 it sounds like you've testified, but just to confirm 7 this for the record, it's correct that at least part 8 of the time, even despite the human nature that you 9 talked about and despite, you know, not wanting to 10 put cases on others in the office, et cetera, that 11 attorneys do write back, at least some of the time, 12 and say, I'm not available to take further cases 13 given my already high caseload at this time?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So you mentioned you have five 16 line attorneys in your office other than yourself; 17 is that right?</p> <p>18 A. Correct.</p> <p>19 Q. And is that the total number of 20 positions -- attorney positions allocated to your 21 office?</p> <p>22 A. Yes.</p> <p>23 Q. So there's not currently a vacancy in the 24 office?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 27</p> <p>1 litigation practices in your office?</p> <p>2 A. Yes.</p> <p>3 Q. So just for the remainder of the 4 deposition, unless I indicate otherwise, if I'm 5 asking a question, I'm asking it about your practice 6 and the practice of the attorneys in your office in 7 Area 14, rather than the statewide practice of the 8 Missouri Public Defenders. Is that clear?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And you mention that you had a 11 caseload. About how many cases do you handle a 12 year?</p> <p>13 A. Well, I don't -- I can't answer you how 14 many cases I handle a year. Currently, I have my -- 15 I have 80 cases that I'm representing individuals 16 on. That will vary. I would estimate my average 17 would be 55 to 65.</p> <p>18 Q. Got it. So it's -- at least -- so you 19 said 80 cases, so that means 80 open cases?</p> <p>20 A. Eighty open cases.</p> <p>21 Q. As of yesterday?</p> <p>22 A. Yes.</p> <p>23 Q. And that's sounds significantly higher 24 than what you -- you said your average is about 55 25 to 65. Is there a reason for this -- that it's 80</p>
<p style="text-align: right;">Page 26</p> <p>1 Q. What other staff do you have in the office 2 other than the five attorneys -- line attorneys, 3 plus yourself?</p> <p>4 A. We have an investigator and we have two 5 legal assistants.</p> <p>6 Q. And what do the legal assistants do?</p> <p>7 A. Open files. They also assist with filing. 8 They do some of the initial e-filings with the court 9 when they're opening cases, and they assist with -- 10 I would call -- since I'm an older lawyer, I would 11 call what were traditionally legal secretarial work. 12 They will schedule depositions, they will call 13 clients to set up appointments, if we ask them to. 14 One of the more important functions is that they 15 assist in getting our clients into drug or alcohol 16 treatment programs. Again, they work at scheduling 17 depositions and -- you know, pretty much most legal 18 secretary functions.</p> <p>19 Q. Great. Any other staff in the office 20 other than those individuals that you've already 21 identified?</p> <p>22 A. No.</p> <p>23 Q. Okay. Given your daily interaction with 24 the other -- with the line attorneys in your office, 25 would you say you're familiar with the standard</p>	<p style="text-align: right;">Page 28</p> <p>1 as of yesterday or ...</p> <p>2 A. Because -- well, because in about or 3 November of this year, we were looking at the case 4 numbers for individual lawyers. I had a couple of 5 lawyers say, We're maxed out, we need some relief, 6 and so I've -- I took a lot of cases not from them 7 but the new cases that were coming in the door out 8 of Randolph County so that they would be given the 9 opportunity to work through their case numbers and 10 work through their cases without getting more new 11 cases.</p> <p>12 Q. Got it. So you said "a couple." Is that 13 two or three?</p> <p>14 A. It was two lawyers out of -- it was out of 15 Randolph County, because there had been a big influx 16 of filings.</p> <p>17 Q. Got it. And so -- you sort of mentioned 18 this earlier, but are there certain attorneys in 19 your office who are assigned to each of the five 20 counties that your office covers?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And how many attorneys are assigned 23 to Randolph?</p> <p>24 A. There are two lawyers that are primarily 25 assigned to Randolph County.</p>

7 (Pages 25 to 28)

1 Q. And so both of those lawyers that you said
2 in October or November of this year said, We can't
3 handle any more cases, at least for the time being?

4 A. Yes.

5 Q. And so then you took on -- did you take on
6 all of the additional cases in Randolph County for a
7 time period -- all of the new cases? Sorry.

8 A. Yes.

9 Q. Okay. And are you -- has that -- are you
10 still continuing to take on all of the new cases?

11 A. No.

12 Q. Okay. For about how long did you take on
13 the new cases, approximately?

14 A. About a month.

15 Q. Okay. And then they indicated that they
16 were able to take on some more cases for the time
17 being?

18 A. Yes.

19 Q. Okay. And you mentioned you looked at the
20 fiscal year numbers for your office. If you recall,
21 about how many cases from the last fiscal year --
22 and I'm speaking of fiscal year '17 now, which is
23 July 1st 2016 to June 30th, 2017 -- did your office
24 handle?

25 A. It was -- well, initiated in that time

1 honestly can't tell you a number. I'm going to
2 guess 30 percent, maybe, right now.

3 Q. Got it. Any reason why -- that you know
4 of for why that figure is --

5 A. Well, I can speculate as to some of the
6 reasons why. Each county has its own prosecutor.
7 The prosecutors file cases at different rates. I
8 can't tell you the why of how it happens. Some
9 prosecutors hold files until the end of the year,
10 or, for some reason, don't file cases until the end
11 of the year, and then you'll get inundated with a
12 lot of new filings.

13 In Randolph County, there's been a fairly
14 substantial decrease in filings, really, September,
15 October, November, but I -- based on history, I
16 fully expect that to change. Some of that could be
17 attributed to -- the prosecutor of Randolph County
18 has made an application for being a judge, and he's
19 a little bit distracted right now.

20 Q. Got it. Okay. So you don't think this is
21 some -- from your experience, it doesn't appear that
22 this is some broader trend that's going to relieve
23 the burden on your office?

24 A. I don't believe so, based on the history
25 of the office.

1 period was something over 1,500.

2 Q. Okay. And can you explain for the record
3 what "initiated" means?

4 A. That would be opening a new case -- a new
5 file for an individual.

6 Q. Okay. And, obviously, you come in on the
7 day -- June 1st -- scratch that -- on the day
8 July 1st, 2016, you don't come in -- your office
9 doesn't come into that day with a caseload of zero,
10 correct, you have all of your cases from -- all of
11 your open cases that were existing on the day prior
12 to that?

13 A. Yes.

14 Q. And do you have -- you mentioned, perhaps,
15 that you had looked at an additional year back, is
16 that right or ...

17 A. I looked at fiscal year '17 and looked at
18 this fiscal -- 2018 fiscal year.

19 Q. Got it. So the fiscal year to date, the
20 first six-ish months of the fiscal year?

21 A. Uh-huh. Yes.

22 Q. And do you recall the numbers for that?

23 A. I didn't total them up. I can tell you
24 that so far, it's -- the numbers are less compared
25 to the fiscal year of 2017. How much less, I

1 Q. Got it. And you had mentioned that the
2 two attorneys in Randolph have gotten an influx of
3 cases. Was that in the time -- but then you also
4 said that in September, October, November in
5 Randolph, there was a decrease. So just when did
6 they get the increase and --

7 A. Well, it would have -- I won't say it was
8 necessarily an increase, but with their carryover
9 the prior fiscal year, they had just built up a
10 large number of case that needed -- they needed time
11 to work through.

12 Q. Okay. And when you say -- so you mention
13 that often, for whatever reason, the prosecutors
14 will file a number of cases at the very end of the
15 year. So does that mean that you expect that in the
16 next -- obviously, it's December -- almost the
17 middle of the December, that you expect in the next
18 couple of weeks, there'll be an influx of new cases?

19 A. I think it's very possible that that could
20 happen, but it -- but it also -- I can't say that
21 with any certainty because -- because it could
22 easily happen later on, too. It depends, really, on
23 the prosecutors.

24 Q. And what is this -- the election for the
25 judicial seat that you were mentioning earlier?

<p style="text-align: right;">Page 33</p> <p>1 A. Well, I think they expect that to be an 2 appointment made before the end of the year. 3 Q. Got it. Okay. At which time there'll be 4 a new prosecutor in Randolph County, assuming he's 5 appointed? 6 A. Yes. 7 Q. How many of the attorneys in your office 8 handle felony cases? 9 A. All of the attorneys handle felony cases. 10 Q. And how many of them -- and that's all of 11 the attorneys in -- all six of them -- five 12 line attorneys, plus yourself? 13 A. Yes. 14 Q. And how many of them handle misdemeanor 15 cases? 16 A. All of them handle misdemeanor cases. 17 Q. And how many of the attorneys handle 18 juvenile cases? 19 A. All of them do. I have one attorney 20 that -- she likes doing the juvenile work, and I 21 give -- and she wants the opportunity to do juvenile 22 cases as often as she can, and so we've migrated 23 toward, if possible, allowing her to enter into all 24 of the juvenile cases. 25 Q. But other attorneys in your office still</p>	<p style="text-align: right;">Page 35</p> <p>1 four years of experience, and then I have two 2 lawyers that have two years of experience. 3 Q. Got it. So after Robert Fleming, who, 4 obviously, has a couple of decades of experience, 5 the next most experienced attorney -- line attorney 6 in your office has three and a half to four years of 7 experience? 8 A. Yes. 9 Q. Got it. Are there any other -- other than 10 yourself, you mentioned you have supervisory 11 responsibilities. Are there any other supervisors 12 in the office -- supervisor attorneys? 13 A. No. 14 Q. I just want to talk for a second about 15 initial appearances. Can you describe -- and I know 16 you -- I understand that you represent -- that you 17 represent individuals in five counties, so the 18 practice may differ, but in the line run of cases, 19 what the practice is at initial appearances, in 20 terms of when an individual is arrested, what 21 happens next? 22 And let me know if that question doesn't 23 make sense, and I can clarify. 24 A. Well, the question makes sense, but it -- 25 it varies from county to county. I will give -- I</p>
<p style="text-align: right;">Page 34</p> <p>1 have at least some juvenile cases? 2 A. I think at this time there's only one 3 other lawyer that has a juvenile case that's 4 pending. It's a little different in the rural 5 counties. We don't always get appointed into 6 juvenile cases. It's not a high volume part of our 7 practice, as opposed to some of the larger 8 metropolitan areas, where it's a big part of the 9 practice. 10 Q. And do you know who does get appointed, if 11 your office is not appointed to those juvenile 12 cases? 13 A. Many times the court will appoint local 14 lawyers into juvenile cases. 15 Q. Okay. Other than yourself -- obviously, 16 you've been practicing for almost 30 years -- or 26 17 years. How long has the -- other than yourself, how 18 long has the most experienced attorney in your 19 office been practicing? 20 A. Robert Flemming in my office has worked 21 for the state public defenders for 25 years. When 22 Rob started practicing law, I can't tell you -- I'm 23 guessing four or five years before he started with 24 the public defender's office. Then the next two 25 lawyers would have approximately three and a half to</p>	<p style="text-align: right;">Page 36</p> <p>1 can give you a general scenarios for a couple of 2 different ways. 3 In certain counties, an individual when 4 they're arrested and are in -- and they can't post 5 bond, the jails will fax to our office an 6 application for services, and we'll review that 7 application and determine whether or not the 8 individual qualifies. That person may not have a 9 court date for another week, or it could be two 10 weeks before they will actually go in front of the 11 judge, because the rural counties schedule 12 differently. They don't have a -- necessarily have 13 a law day every week. In those counties, we 14 certainly would appear with that individual when 15 they have their next court date. 16 In other counties that have a higher 17 volume, the jails will either fax us the 18 applications, or when we go to the jail seeing other 19 clients, we will pick up those applications. Again, 20 making the determination as to whether or not they 21 qualify. And in those cases in those counties, 22 generally, they would, depending on what day of the 23 week the individual was arrested, they would go in 24 front of a judge within five or six days. 25 Q. Got it. Okay.</p>

9 (Pages 33 to 36)

<p style="text-align: right;">Page 37</p> <p>1 And when is bail set, for the most part?</p> <p>2 A. At the time that the judge issues a</p> <p>3 warrant, they will issue a bond -- they will set a</p> <p>4 bond amount.</p> <p>5 Q. At the time the judge issues a warrant for</p> <p>6 someone's arrest?</p> <p>7 A. Yes.</p> <p>8 Q. So before they're even arrested?</p> <p>9 A. Well, someone could have been arrested on</p> <p>10 view and brought to jail, and then they'll apply,</p> <p>11 but, typically, the bonds are set before they go to</p> <p>12 their first court appearance.</p> <p>13 Q. Okay. And are those bonds set, then,</p> <p>14 before your office represents the individual?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And when -- again, in a typical</p> <p>17 case, understanding that there are some geographical</p> <p>18 and other differences -- when is your first contact</p> <p>19 with your clients? When and where does that occur?</p> <p>20 A. I'm going say, generally, it would be at</p> <p>21 their first appearance in court.</p> <p>22 Q. Okay. And is that, generally, again --</p> <p>23 forgive me for the general question, but, generally,</p> <p>24 does that contact mean that the communication is</p> <p>25 occurring at counsel table or in the well of the</p>	<p style="text-align: right;">Page 39</p> <p>1 hearing -- the first hearing that you're describing</p> <p>2 now, at least the first time that your office</p> <p>3 traditionally appears on the case for a client, is</p> <p>4 that at that hearing that bond reduction</p> <p>5 applications are made?</p> <p>6 A. We would ask for -- we would make an oral</p> <p>7 application for bond reduction. Depending on what</p> <p>8 type of case, it may not be heard at that time, but,</p> <p>9 certainly, for some of the lower-level misdemeanor</p> <p>10 and felonies, the judges generally will take it up,</p> <p>11 but -- by oral motion.</p> <p>12 Q. Okay. So, obviously, at that time, you</p> <p>13 and the attorneys in your office haven't had much</p> <p>14 time to investigate either the details of the case</p> <p>15 or the background --</p> <p>16 A. We would have had no time to investigate</p> <p>17 the details of the case at that time.</p> <p>18 Q. Would you have had time to investigate the</p> <p>19 background of the individual --</p> <p>20 A. No. It would be based on what they were</p> <p>21 able to tell us and what was on their application.</p> <p>22 Q. What they were able to tell you in that</p> <p>23 brief conversation you described earlier?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. What resources are available to the</p>
<p style="text-align: right;">Page 38</p> <p>1 court or something while court is in session -- and</p> <p>2 court is in session on other cases, not necessarily</p> <p>3 on that -- on the case --</p> <p>4 A. I think that's relatively fair to say,</p> <p>5 that a lot of communication goes on that way. Some</p> <p>6 of the courthouses do have available rooms where you</p> <p>7 can meet with an attorney, but, certainly, it is a</p> <p>8 brief contact, at best.</p> <p>9 Q. Okay. What -- and when you say "brief</p> <p>10 contact at best" -- sorry -- does that mean that</p> <p>11 sometimes there's very little contact before that</p> <p>12 initial appearance?</p> <p>13 A. Yes.</p> <p>14 Q. The initial time at least -- forget the</p> <p>15 initial appearance, because you could not have been</p> <p>16 there for that, but the first time you're</p> <p>17 appearing --</p> <p>18 A. Again, it varies, but I think for the most</p> <p>19 part, it's fair to say that the first appearance at</p> <p>20 court -- when you're first having first contact with</p> <p>21 the client is brief, just because the court is --</p> <p>22 the judge is on the bench, the court is moving at</p> <p>23 that time, and there's not an opportunity to have a</p> <p>24 lengthy conversation with the client.</p> <p>25 Q. Okay. And what -- is it at that first</p>	<p style="text-align: right;">Page 40</p> <p>1 attorneys in your office for social work help, if</p> <p>2 any?</p> <p>3 A. Well, what we try to do for the clients</p> <p>4 is, primarily, individuals that express a desire for</p> <p>5 drug treatment, that we will assist them in making</p> <p>6 applications for treatment, we will call treatment</p> <p>7 providers, get people on wait lists to try to get</p> <p>8 them into either in-patient -- to an in-patient</p> <p>9 treatment program. And it's primarily only</p> <p>10 substance abuse, because in Missouri, there's just</p> <p>11 not any available good sources for mental health</p> <p>12 treatment.</p> <p>13 Q. All right. And in terms of experts, what</p> <p>14 resources are available for the attorneys in your</p> <p>15 office?</p> <p>16 A. Do you mean, like, for use at trial</p> <p>17 experts or ...</p> <p>18 Q. We can start with that, sure. For use at</p> <p>19 trial or for use at any stage. My general question</p> <p>20 is for use at any stage, you know, for pretrial</p> <p>21 motions or at trial.</p> <p>22 A. I mean, we do have access to an expert</p> <p>23 database that we can look at, if we determine</p> <p>24 there's a need for an expert in the case to locate</p> <p>25 experts to hire to use in cases.</p>

10 (Pages 37 to 40)

<p style="text-align: right;">Page 41</p> <p>1 Q. Okay. On average, how frequently do the 2 attorneys in your office file pretrial motions, 3 would you say? 4 A. I believe we're pretty aggressive on 5 filing motions to dismiss, motions to suppress, and 6 bond reduction motions. 7 Q. Okay. I want to show you an exhibit which 8 I'll mark Plaintiff's Exhibit 29. 9 (Deposition Exhibit No. 29 was marked for 10 identification.) 11 Q. (By Mr. Scherzer) Let me know when you've 12 had a chance to look this over. 13 A. Yes. 14 Q. Okay. Do you recognize this exhibit I've 15 marked Plaintiff's Exhibit 29? 16 A. Yes. 17 Q. And what is it? 18 A. It's a letter that I sent out in October 19 to -- this letter is addressed to the circuit judge 20 of Randolph County, Scott Hayes, and it -- and the 21 purpose of the letter was to alert Judge Hayes that 22 we may have issues with the number of cases and 23 accepting new cases in the months to come. 24 Q. Okay. And is Judge Hayes the only judge 25 in Randolph County?</p>	<p style="text-align: right;">Page 43</p> <p>1 the wheel, I just redrafted that letter. 2 Q. So you adapted it for your office, but the 3 general template was one used by another office 4 previously? 5 A. Yes. 6 Q. Okay. And do you recall which office that 7 was? 8 A. I believe that this was the letter that 9 came out of the Boone County Area 13 office. 10 Q. Okay. All right. So I'd like to refer 11 you, then, to a few portions of the letter, if I 12 might. 13 So you talk in the first paragraph 14 about -- in the second sentence, I'm sure you're 15 aware of the recent action taken by OCDC against a 16 public defender." Do you see? 17 A. Yes. 18 Q. And is that referring to the Hinkebein 19 decision? 20 A. Yes. 21 Q. And the Hinkebein case -- not just the 22 decision, obviously, since you're talking about 23 OCDC's recommendation, et cetera? 24 A. Yes. 25 Q. Okay. And then you see in the second</p>
<p style="text-align: right;">Page 42</p> <p>1 A. Well, Judge Hayes is the circuit judge. 2 There is an associate judge. At that time, it was 3 Cynthia Suter in Randolph County, and there's an 4 associate judge in Howard County, Mason Gephardt. 5 Q. Okay. And you see at the top the letter 6 is dated October 2nd, 2017; is that right? 7 A. Yes. 8 Q. And if you turn to the -- looking now at 9 the Bates stamp numbers at the bottom, it's 10 MSPD39410. Do you see that -- the last page of the 11 letter? 12 A. Yes. 13 Q. And who is the letter signed by? 14 A. It's mine -- well, it's my electronic 15 signature. 16 Q. Your electronic signature. Fair enough. 17 And that's -- under your -- above the caption, 18 "Edward L. Guinn Area 14 District Defender?" 19 A. Yes. 20 Q. Okay. And who drafted this letter, if you 21 know? 22 A. Well, I drafted it. Quite honestly, it 23 was -- another office had sent out a letter that -- 24 here's an example of what we sent out to alert the 25 judges in their circuit, and rather than reinvent</p>	<p style="text-align: right;">Page 44</p> <p>1 paragraph -- can you read the first two sentences in 2 that paragraph for us? 3 A. "The Supreme Court referenced Rule 4-1.7, 4 which states, in part, that it is a conflict of 5 interest if there is a significant risk that the 6 representation of one or more clients will be 7 materially limited by the lawyer's responsibilities 8 to another client. MSPD recognizes that while each 9 attorney is employed by the office of the Missouri 10 State Public Defender, it is the individual and 11 personal responsibility of each attorney to comply 12 with the rules of professional conduct." 13 Q. And, obviously, you -- you know, you sent 14 this letter. I presume you agree with this -- the 15 statements expressed. You still agree with the 16 statements expressed in the first two sentences in 17 that paragraph? 18 A. I do. 19 Q. And at the bottom of that page, you'll see 20 that it says, "Attorneys violate those rules --" 21 meaning the rules of professional conduct -- "-- if 22 they accept a case that results in -- " I presume 23 there's an "in missing -- "-- that results in 24 representation to act with reasonable diligence and 25 to keep the client reasonably informed." Do you see</p>

11 (Pages 41 to 44)

<p style="text-align: right;">Page 45</p> <p>1 that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And then if you turn to the -- on</p> <p>4 the next page -- again, I'm talking now about 39409.</p> <p>5 Do you see the paragraph in the middle of the page</p> <p>6 that begins with "As of today's date"?</p> <p>7 A. Yes.</p> <p>8 Q. Can you just read that paragraph for us?</p> <p>9 A. "As of today's date, I believe the</p> <p>10 attorneys assigned to Randolph County are currently</p> <p>11 violating the rules of the professional conduct.</p> <p>12 Their current individual caseloads reflect a</p> <p>13 conflict of interest with existing clients because</p> <p>14 they are forced to choose effective representation</p> <p>15 of one client to the detriment of other clients. I</p> <p>16 believe assigning any new cases to any individual</p> <p>17 attorneys would create a conflict of interest</p> <p>18 because they would have no ability to adequately</p> <p>19 represent either their current or prospective</p> <p>20 clients."</p> <p>21 Q. Okay. And do you still agree with the</p> <p>22 sentiments expressed in that letter -- in that</p> <p>23 paragraph?</p> <p>24 A. Well, yes. Again, based on -- this was</p> <p>25 based on the case levels at that time.</p>	<p style="text-align: right;">Page 47</p> <p>1 Public Defender will no longer be immediately</p> <p>2 entering into cases in which a defendant has</p> <p>3 qualified."</p> <p>4 A. Correct.</p> <p>5 Q. And then a couple of sentences later it</p> <p>6 says:</p> <p>7 "If the perspective client qualifies, I</p> <p>8 will not assign an attorney until there is an</p> <p>9 attorney who can assume the representation without</p> <p>10 violating the rules of professional conduct."</p> <p>11 Is that right?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. And then the next sentence:</p> <p>14 "We cannot file an entry with individual</p> <p>15 attorneys bar number if we and the attorneys know</p> <p>16 that doing so violates the rules of professional</p> <p>17 conduct."</p> <p>18 Is that right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. And I'll just read the rest of the</p> <p>21 paragraph, actually .</p> <p>22 "To be clear, there are not hidden agendas</p> <p>23 or motivations with regard to this decision. This</p> <p>24 is simply about ensuring all Area 14 public</p> <p>25 defenders are able to maintain their license to</p>
<p style="text-align: right;">Page 46</p> <p>1 Q. Got it.</p> <p>2 A. The sent -- I mean, the -- and I believe</p> <p>3 the interpretation of law remains the same.</p> <p>4 Q. Okay. And -- so what motivated you to</p> <p>5 send this letter?</p> <p>6 A. Well, primarily, the Hinkebein decision</p> <p>7 was the primary motivating factor.</p> <p>8 Q. And can you tell us your understanding of</p> <p>9 the Hinkebein case and decision?</p> <p>10 A. Well, I suppose in a nutshell, is that the</p> <p>11 rules of professional responsibility apply to</p> <p>12 lawyers employed by the state public defender's</p> <p>13 office, and that we have to comply with those rules,</p> <p>14 and that it's each individual attorney's obligation</p> <p>15 to conduct themselves in a way that follows the</p> <p>16 rules of professional conduct.</p> <p>17 Q. Got it. Okay. And so your opinion, based</p> <p>18 on your many years of experience, at least at the</p> <p>19 time you sent this letter, was that the attorneys in</p> <p>20 your office weren't able to ethically take on</p> <p>21 additional cases?</p> <p>22 A. At that time, yes.</p> <p>23 Q. Okay. And then if you look at the next</p> <p>24 paragraph, also still on 39409, the next sentence</p> <p>25 after the one you read said, "The Randolph County</p>	<p style="text-align: right;">Page 48</p> <p>1 practice law without threat of discipline by ODCD."</p> <p>2 Is that right?</p> <p>3 A. Correct.</p> <p>4 Q. Okay. And so you wanted to ensure that</p> <p>5 the -- you and the line attorneys in your office for</p> <p>6 whom you're responsible were not threatened -- that</p> <p>7 their bar licenses were not threatened by virtue of</p> <p>8 their representation of additional new clients that</p> <p>9 they weren't able to represent?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And then I want to look at 39410,</p> <p>12 the next page of that letter. The first full</p> <p>13 paragraph on that page says:</p> <p>14 "We have started an internal wait list for</p> <p>15 defendants who qualify for representation but who do</p> <p>16 not yet have an attorney assigned to them."</p> <p>17 And then the -- skipping a sentence.</p> <p>18 "We will be providing defendants on the</p> <p>19 wait list with a letter advising them they qualify</p> <p>20 and that we will notify them as soon as an attorney</p> <p>21 is available to take their case." Is that right?</p> <p>22 A. Yes.</p> <p>23 Q. Did your office at any point have such a</p> <p>24 wait list?</p> <p>25 A. We did.</p>

12 (Pages 45 to 48)

1 **Q. Okay. Can you tell me about that -- how**
 2 **it was set up, who was on it, and the like? I'll**
 3 **have some follow-up questions, but ...**

4 A. I can't tell you who -- what clients were
 5 on it. I can tell you that after this letter was
 6 sent out, that as applications came in, they were
 7 reviewed to determine eligibility. And the
 8 hierarchy for placing people on the list was
 9 individuals that were in custody were at the top of
 10 the list. Cases where the individuals were not in
 11 custody were still on the list, but they had a lower
 12 priority, and that's how it was maintained. Also, I
 13 was very concerned about individuals that were in
 14 custody and moving them off of that wait list as
 15 quickly as possible. I quite honestly think that
 16 the longest anyone was on the wait list was a little
 17 over a week at that time.

18 **Q. Okay. And is that -- was that wait list**
 19 **limited to Randolph County?**

20 A. Yes.

21 **Q. Okay. And does your office still have a**
 22 **wait list?**

23 A. We do not.

24 **Q. Okay. And is that because -- is that at**
 25 **least in part because you took on a number of -- a**

1 **fair number of additional cases to your own**
 2 **caseload?**

3 A. Yes. And the fact that, as we discussed
 4 earlier, the prosecutor in Randolph has not been
 5 filing as many cases the last month or so.

6 **Q. Got it. And, again, your opinion, based**
 7 **on your many years, both in this office and practice**
 8 **generally, is that that's a time limited caseload**
 9 **slowdown due to some -- the vagaries of that**
 10 **particular prosecutor's office?**

11 A. I believe, based on the history of how
 12 cases come into our office, that this is a temporary
 13 slowdown.

14 **Q. Certainly, the prosecutor -- either an**
 15 **individual prosecutor or the head prosecutor in that**
 16 **office hasn't indicated to you that he now believes**
 17 **fewer criminal defendants should be charged and**
 18 **brought to court for any reason?**

19 A. We have not had a discussion like that at
 20 all.

21 **Q. And if there's a time when the caseload,**
 22 **as you expect it to, picks up again, is -- are**
 23 **you -- is a wait list something that you are**
 24 **contemplating as a possibility for the future, if**
 25 **and when that occurs?**

1 A. Yes. I mean, this is a dynamic process.
 2 I -- next -- you know, the next time we have a wait
 3 list, it may not be Randolph County, it may be
 4 another county. Again, it depends on how many cases
 5 are filed, what type of cases each attorney has in
 6 their inventory of cases, and what their
 7 individual -- I mean, this is -- it has to be an
 8 individual determination by each lawyer that -- are
 9 they meeting their obligations in the representation
 10 of their clients?

11 **Q. Okay. And I just -- I would like you to**
 12 **just read one final sentence, if you could, on**
 13 **39410. It's the sentence in the second-to-last**
 14 **paragraph, "The only ends."**

15 A. "The only ends I am aspiring to achieve is
 16 the effective zealous and diligent representation of
 17 poor persons by counsel who are not under threat of
 18 bar discipline by ODC.".

19 **Q. Okay. Thank you. And what was the**
 20 **response, if any, from the judges or the court**
 21 **system in Randolph County to this letter?**

22 A. I believe it was very positive. Judge
 23 Hayes contacted me, and we scheduled a meeting, and
 24 Judge Hayes and I met and talked about the caseloads
 25 and moving cases through the court and what the

1 court could do to help with the caseloads and -- and
 2 it was kind of a far ranging discussion about
 3 bonding and aspects of court procedure that might
 4 make things more efficient for lawyers to alleviate
 5 some of this burden.

6 **Q. And what -- if you can give -- you don't**
 7 **have to give every example, but an example or two of**
 8 **things that were discussed at that time.**

9 A. Well, the judge certainly had ideas of how
 10 he wants his court run, and he was -- had -- was
 11 making suggestions about how he would schedule cases
 12 and utilize other judges to perhaps move dockets,
 13 make them more efficient, and that's probably the --
 14 a primary discussion with the judge as to how to
 15 make his court more efficient so that lawyers aren't
 16 sitting for extended periods of time on long all-day
 17 dockets.

18 **Q. And what, if any, was the response of the**
 19 **prosecutor in the prosecutor's office in Randolph**
 20 **County to this letter?**

21 A. There was no conversation with the
 22 prosecutor about the letter.

23 **Q. Okay. And you mentioned, again, the**
 24 **waiting list and that you were concerned about**
 25 **moving those in custody off the waiting list as soon**

<p style="text-align: right;">Page 53</p> <p>1 as possible. I take it, therefore, that there were</p> <p>2 at least some individuals who were in custody who</p> <p>3 were on the waiting list for at least some short</p> <p>4 period of time.</p> <p>5 A. Yes.</p> <p>6 Q. Okay. I'd like to show you what I'll now</p> <p>7 mark as Plaintiff's Exhibit 30.</p> <p>8 (Deposition Exhibit No. 30 was marked for</p> <p>9 identification.)</p> <p>10 Q. (By Mr. Scherzer) Let me know when you've</p> <p>11 had a chance to look it over.</p> <p>12 A. I have.</p> <p>13 Q. And do you recognize this letter?</p> <p>14 A. I do.</p> <p>15 Q. And what is it?</p> <p>16 A. It a letter, again, dated October 2nd that</p> <p>17 was sent to Judge Fred Tucker in -- who is the</p> <p>18 circuit judge of Macon County.</p> <p>19 Q. Okay. And, again, if we turn to the last</p> <p>20 page, 39407, there's your electronic signature</p> <p>21 there; is that right?</p> <p>22 A. That's correct.</p> <p>23 Q. And, again, over the signature caption of</p> <p>24 "Edward L. Guinn Area 14 District Defender"?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 55</p> <p>1 had a chance to look at that.</p> <p>2 A. Yes.</p> <p>3 Q. And do you recognize this letter?</p> <p>4 A. I do.</p> <p>5 Q. And what is it?</p> <p>6 A. This is also a letter dated October 2nd,</p> <p>7 2017. It was sent to Judge Terry Tschannen, who is</p> <p>8 the circuit judge of the Ninth Judicial Circuit of</p> <p>9 Linn -- which is Linn County and Chariton County.</p> <p>10 Q. Got it. And, again, other than</p> <p>11 substituting in Linn County and any related</p> <p>12 ministerial or logistical changes to account for</p> <p>13 that, is this letter, in all substantive respects,</p> <p>14 otherwise identical to Exhibits 29 and 30?</p> <p>15 A. It is the same letter, yes.</p> <p>16 Q. And, again, it's signed -- if you look at</p> <p>17 page 39404, it has your electronic signature above</p> <p>18 the caption, "Edward L. Guinn Area 14 District</p> <p>19 Defender"; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. All right. And were the same reasons that</p> <p>22 motivated you to send the -- Plaintiff's Exhibit 29</p> <p>23 to Judge Hayes in Randolph County the reasons that</p> <p>24 you sent this letter to Judge Tschannen in Linn</p> <p>25 County?</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. And if you recall, is this letter -- other</p> <p>2 than substituting in Macon County for</p> <p>3 Randolph County and similar changes for attorneys</p> <p>4 and the like, is this, in all substantive respects,</p> <p>5 otherwise identical to the letter that you sent to</p> <p>6 Judge Hayes in Randolph County, Plaintiff's</p> <p>7 Exhibit 29?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And you explained before why you</p> <p>10 were motivated to send the Randolph County letter.</p> <p>11 I presume, since this was sent on the same day, that</p> <p>12 similar motivations inspired you to send this</p> <p>13 letter -- the Macon County letter. Is that fair?</p> <p>14 A. Yes. And -- but I suppose I'll have a</p> <p>15 caveat. When this letter was sent to Macon County,</p> <p>16 I had not had a discussion with the attorney that's</p> <p>17 primarily responsible for Macon County to determine</p> <p>18 his -- whether or not he believed that he was in</p> <p>19 need of help or in need of case relief.</p> <p>20 Q. Okay. I'll show you one additional</p> <p>21 letter, if I could, which I'll mark Plaintiff's</p> <p>22 Exhibit 31.</p> <p>23 (Deposition Exhibit No. 31 was marked for</p> <p>24 identification.)</p> <p>25 Q. (By Mr. Scherzer) Let me know when you've</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Yes.</p> <p>2 Q. Okay. You mentioned -- forgive me -- that</p> <p>3 Judge Tschannen covers Linn and Chariton Counties.</p> <p>4 Do these three letters, given which judges cover</p> <p>5 which counties, cover all five counties that your</p> <p>6 office is responsible for?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And what, if any, changes -- I</p> <p>9 guess we can go look back to Plaintiff's Exhibit 30,</p> <p>10 the letter to Judge Tucker in Macon County. What,</p> <p>11 if any, changes occurred in your office's practice</p> <p>12 in Macon County as a result of this letter?</p> <p>13 A. There was not a wait list instituted in</p> <p>14 Macon County because the attorney that was handling</p> <p>15 that county believed that he was in compliance with</p> <p>16 the rule. I did meet with Judge Tucker and had the</p> <p>17 same kind of discussion about what things could the</p> <p>18 court do to make the court dockets more efficient</p> <p>19 and to assist in making, I guess, court appearances</p> <p>20 easier and assist in not necessarily appointing the</p> <p>21 public defender's office in certain types of cases</p> <p>22 that weren't, perhaps, necessary for an individual</p> <p>23 to have a lawyer appointed: Namely, probation</p> <p>24 cases. Because Judge Tucker acknowledged that he</p> <p>25 had a bad habit of appointing the public defender's</p>

14 (Pages 53 to 56)

1 office in cases where there really wasn't a
2 constitutional need for a lawyer. He was appointing
3 the public defender's office to assist people -- to
4 use them as a social agency to assist people to get
5 into drug treatment.

6 **Q. Got it. When you say "probation cases,"**
7 **do you mean probation revocation cases?**

8 A. Probation revocation cases, yes.

9 **Q. Okay. And do some of the individuals in**
10 **probation -- who are facing probation revocation**
11 **cases face jail time as a result of -- as a possible**
12 **result of that probation violation?**

13 A. They do. Our discussion with Judge Tucker
14 is that they were -- he acknowledged that there were
15 certain cases he had no intention of sending someone
16 to prison. He wanted the individuals into a drug
17 treatment program, and since he had been a former
18 public defender many years ago, he believed that the
19 public defender's office had an ability to get
20 people into drug treatment much faster than
21 probation and parole officers did.

22 **Q. And was the agreement that you came to**
23 **with Judge Tucker that your office would not be**
24 **appointed in any probation revocation cases going**
25 **forward, or just in a subset of probation revocation**

1 Judge Othic at their request, and, again, the
2 conversation was, What can we do to assist, what can
3 we do in terms of court procedure to help your
4 lawyers -- because they understand the distance that
5 we're traveling -- and we had a discussion about
6 bonds and the court setting bonds and talked about
7 potential changes into their local court practice.

8 **Q. So did -- it sounds like in addition to**
9 **the cases you've talked about previously that you**
10 **took in Randolph County to -- because the attorneys**
11 **there weren't ethically able to take on new cases,**
12 **you also, then, took on cases -- some serious cases,**
13 **you mentioned, in Linn County because you -- sorry.**
14 **That was a long preface.**

15 **Was the reason that you took on those**
16 **additional cases -- serious cases in Linn County**
17 **because you didn't think that -- in your opinion,**
18 **that the attorney in Linn County could ethically**
19 **handle those additional cases?**

20 A. Correct. The attorney that is currently
21 assigned Linn County is two years out of law school,
22 and even though he is working very hard and does a
23 good job, there was an incident back in October in
24 which the prosecutor filed five, what I would call,
25 serious felony, sex crime cases, and that lawyer

1 **cases or ...**

2 A. No. There was -- I mean, there was no
3 agreement. The judge indicated to me that he would
4 do his best efforts. If it was, again, an
5 individual that he had no intention of sending to
6 prison, that he would use other avenues to get them
7 into drug treatment and not just always appoint the
8 public defender's office as a stopgap, that he would
9 rely more on probation and parole officers to do
10 what, you know, we believed to be their job, to
11 assist their -- people that are on probation to get
12 into treatment programs.

13 **Q. Okay. Now, turning back to Plaintiff's**
14 **Exhibit 31, the letter to Judge Tschannen in Linn**
15 **County -- or responsible for Linn and Chariton**
16 **Counties. What, if any, changes occurred in your**
17 **office's practice in those counties as a result of**
18 **this letter?**

19 A. Really, no changes in our practices.
20 Again, the lawyer that's assigned to that -- to
21 Linn County has indicated that he's able to meet his
22 obligations. That's true to an extent. I have
23 taken some of the serious felony cases from that
24 area, so -- in order to alleviate his case numbers.
25 We did -- I did meet with Judge Tschannen and

1 would not be able to work his current caseload and
2 effectively represent five individuals with those
3 type of serious felony charges.

4 **Q. Got it. So as a result, you took on --**
5 **how many of those cases did you take on? How**
6 **many -- of those five that you're speaking of.**

7 A. There's -- I have three of them.

8 **Q. And he took the remaining two?**

9 A. No. The other -- they were conflicted out
10 because there were conflicts in the office.

11 **Q. Got it. And so those were sent to a**
12 **private attorney?**

13 A. Uh-huh.

14 **Q. So all of the cases of those ones, at**
15 **least, that you're just speaking of that remained in**
16 **your office, you took all of them onto your own**
17 **docket?**

18 A. Yes.

19 **Q. Okay. Any other cases from Linn County**
20 **that you took on recently that you otherwise would**
21 **not have?**

22 A. No.

23 **Q. Okay. And where are the bulk of your**
24 **cases? I mean, you've described that each of the**
25 **other attorneys sort of have their geographic areas**

1 of expertise, but -- that they're responsible for.
 2 Are your cases limited to a particular geographic
 3 area or not?
 4 A. No. I have cases in Randolph, Linn, and
 5 Adair County and Shelby County, and that's -- yeah,
 6 that's all.
 7 Q. Okay. And I take it, again, you read
 8 the -- the letter about Rule 4-1.7, which the
 9 Supreme Court referred to in the Hinkebein decision,
 10 which talks about a conflict of interest, if there's
 11 a significant risk that the representation of one or
 12 more clients will be materially limited by the
 13 lawyer's responsibilities to another client. Do you
 14 recall --
 15 A. Yes.
 16 Q. -- that sentence from your letters? And I
 17 take it that was your ethical concern with this
 18 attorney in Linn County, that he wouldn't be -- it
 19 would be a conflict of interest if he took on
 20 those -- these additional serious cases, given his
 21 ethical responsibilities to his existing clients?
 22 A. I think that's -- certainly, that is part
 23 of it. The other part is, he's a new lawyer, and he
 24 will be involved with this case, he will be second
 25 chairing, if the cases go to trial, he will be

1 since 2011, four of the five line attorneys have
 2 left the office and been replaced by new attorneys.
 3 Is that fair to say?
 4 A. Yes. I was counting the numbers of --
 5 trying to remember who is coming on in that time.
 6 We've been very fortunate in that we haven't had a
 7 huge turnover in the last two years.
 8 Q. But in the last four years?
 9 A. Yes. There's been four lawyers that have
 10 left.
 11 Q. Out of five?
 12 A. Yes.
 13 Q. Okay. And where, if you know, did those
 14 attorneys go?
 15 A. One lawyer transferred to the -- what's
 16 designated as the SVP unit in the public defender
 17 system. One lawyer left to go -- move back to
 18 St. Louis to work -- I believe he went to work in
 19 the juvenile court in some way in St. Louis. A
 20 third lawyer left and went to Springfield to the
 21 prosecutor's office, and then a fourth lawyer, she
 22 left and moved with her husband to be to
 23 Milwaukee -- no, Detroit, and she works in the state
 24 juvenile system. It's the Division -- it's kind of
 25 like the Missouri State Public Defender, but she

1 involved with the cases, but he could not, I don't
 2 believe, ethically represent these individuals
 3 because of the combination of inexperience and his
 4 case numbers.
 5 Q. Okay. And for the attorneys in
 6 Randolph County -- the two attorneys you mentioned
 7 who -- for which you took on a number of cases to
 8 your own docket because of their ethical concerns
 9 about their caseload, was that also because of a
 10 conflict of interest rule and other rules of
 11 professional conflict that we're talking about here?
 12 A. Yes.
 13 Q. Okay. It sounds like -- because you said
 14 that the -- other than -- and I believe his name
 15 was -- was his name Mr. Flemming?
 16 A. Rob Flemming, yes.
 17 Q. Rob Flemming. Other than Mr. Flemming,
 18 the other four attorneys -- line attorneys in your
 19 office, none of them have been there longer than
 20 four years; is that right -- or four and a half
 21 years, I think you said?
 22 A. Correct.
 23 Q. So in the time that you've been at the
 24 Area 14 office, first as an assistant public
 25 defender, and now as the district defender, which is

1 represents juvenile clients.
 2 Q. Got it. Okay. And what effect on
 3 clients, if any, is there when there's turnover in
 4 the office and the individuals -- the line attorneys
 5 who are working in the office on that -- on the
 6 previous individual's clients, what effect, if any,
 7 is there?
 8 A. Well, I think -- it's never good to have a
 9 change in representation in the course of the
 10 representation of a client. It makes the clients
 11 uneasy, it -- you know, a new lawyer has to spend
 12 time familiarizing themselves, and so it -- more
 13 than anything, it just adds time. If it's an
 14 individual that's in custody, that means they stay,
 15 potentially, in custody longer. I think ultimately
 16 there's not a negative impact but for the increase
 17 in time and the increase in workload on the other
 18 lawyers in the office.
 19 Q. Got it. Okay. How many of your --
 20 approximately what percentage of cases in your
 21 office are resolved by plea deals or agreements?
 22 A. I'm going to estimate that it's probably
 23 at least 90 percent.
 24 Q. Okay. Do you know how many trials your
 25 office did in the -- say the last fiscal year --

<p style="text-align: right;">Page 65</p> <p>1 fiscal year '17?</p> <p>2 A. I believe there was ten.</p> <p>3 Q. Approximately.</p> <p>4 A. Yeah.</p> <p>5 Q. Okay. And remind me, again, if you could</p> <p>6 of the -- you said the total case number was about</p> <p>7 15- --</p> <p>8 A. It was -- it's over 1,500. I want to say</p> <p>9 it was 1,560, somewhere around that number.</p> <p>10 Q. Okay. So without getting into heavy math</p> <p>11 here --</p> <p>12 A. The bench trials -- I can't tell you how</p> <p>13 many bench trials were done because I don't really</p> <p>14 look at those.</p> <p>15 Q. Got it.</p> <p>16 A. There would have been some number of bench</p> <p>17 trials done also.</p> <p>18 Q. As an estimate, do you think more than 50</p> <p>19 bench trials?</p> <p>20 A. I don't think it would be that high. I</p> <p>21 don't think that trials -- it isn't always the</p> <p>22 measure of what happens in the life of cases.</p> <p>23 There's a -- you know, there's a substantial number</p> <p>24 of cases that are dismissed. I mean, they all</p> <p>25 don't -- all cases aren't pled out, is what I'm</p>	<p style="text-align: right;">Page 67</p> <p>1 prosecution recommendation?</p> <p>2 A. That's part of our intake when we meet</p> <p>3 with a client, is we always ask if they are a United</p> <p>4 States citizen or if they can tell us what their</p> <p>5 immigration status is. If we have clients -- and we</p> <p>6 do from time to time, though our area is not --</p> <p>7 doesn't have a large population of immigrants, but</p> <p>8 when we do have that issue arise, there are</p> <p>9 resources within the state public defender system</p> <p>10 that we can access to evaluate that person's status</p> <p>11 and how these -- our particular case that we're</p> <p>12 representing them on will affect their immigration</p> <p>13 status up to -- ultimately, if necessary, trying to</p> <p>14 get them counsel to represent them regarding their</p> <p>15 immigration status with INS.</p> <p>16 Q. Got it. Okay. Have any -- just jumping</p> <p>17 around for one second, have any private attorneys</p> <p>18 been -- other than in conflict cases like you've</p> <p>19 described, have there been any private attorneys</p> <p>20 appointed to represent clients who -- appointed by</p> <p>21 the courts in the five counties that you work in --</p> <p>22 any private attorneys been appointed to represent</p> <p>23 individuals who are otherwise qualified to --</p> <p>24 qualified for public defender services?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 66</p> <p>1 getting to. But all of them are not tried, either,</p> <p>2 because you do have dismissals, you have alternate</p> <p>3 dispositions, and I don't keep track of dismissals.</p> <p>4 At that time -- I don't keep track of dismissals or</p> <p>5 deferred prosecutions, those type of dispositions.</p> <p>6 Q. Got it. Okay. And, typically, when in</p> <p>7 the life of a case would your office file motions?</p> <p>8 Would it be closer to the eve of trial or early in</p> <p>9 the case, or does it depend?</p> <p>10 A. It certainly depends on what motions</p> <p>11 you're talking about. Bond reduction motions are</p> <p>12 filed early on in the case. Suppression motions,</p> <p>13 something of that sort would be filed -- they might</p> <p>14 be filed prior to preliminary hearings, or they</p> <p>15 might be filed after preliminary hearings. Motions</p> <p>16 to dismiss, though -- there's not truly a motion to</p> <p>17 dismiss provided for in the rules -- are filed,</p> <p>18 typically, after preliminary hearings.</p> <p>19 So it's -- it's an ongoing process. I</p> <p>20 can't give you a hard and fast rule because every</p> <p>21 case is so fact dependent.</p> <p>22 Q. Got it. That's fair. What steps, if any,</p> <p>23 do you take -- do you or the attorneys in your</p> <p>24 office take to evaluate the immigration consequences</p> <p>25 a client might be facing as a result of a criminal</p>	<p style="text-align: right;">Page 68</p> <p>1 Q. Okay.</p> <p>2 MR. SCHERZER: I think actually -- should</p> <p>3 we take -- I'm going to pull up another couple of</p> <p>4 exhibits, but should we take a break for a couple of</p> <p>5 minutes -- five minutes?</p> <p>6 VIDEOGRAPHER: The time is 10:08 a.m., and</p> <p>7 we're off the record.</p> <p>8 (A recess was taken.)</p> <p>9 VIDEOGRAPHER: The time is 10:19 a.m., and</p> <p>10 we're back on the record.</p> <p>11 Q. (By Mr. Scherzer) Okay. So, Mr. Guinn,</p> <p>12 I'm going to show you what's been previously marked</p> <p>13 as Plaintiff's Exhibit 21, which is this -- we're</p> <p>14 laughing because the cover page to -- there's some</p> <p>15 corruption in the files, and the cover page is a</p> <p>16 little messed up. I guess I'll show you the cover</p> <p>17 page.</p> <p>18 So if you could, at the top of the page,</p> <p>19 do you see this seal starting in the middle of the</p> <p>20 page -- or the top third of the page, I guess, to be</p> <p>21 fair?</p> <p>22 A. Yes.</p> <p>23 Q. And does that say "Missouri State Public</p> <p>24 Defender Commission"?</p> <p>25 A. Yes.</p>

17 (Pages 65 to 68)

<p style="text-align: right;">Page 69</p> <p>1 Q. And then underneath it, it says, "Fiscal 2 year 2018"; is that right? 3 A. Yes. 4 Q. And it says, "Approved, October 25th, 5 2017"? 6 A. Yes. 7 Q. And then there's a star, but it looks like 8 it's saying, "Supplemental Legislative Letter 9 Request. Is that right? 10 A. Yes. 11 Q. Okay. And underneath it says, "Michael 12 Barrett, Director, Commission Meeting October 25, 13 2017"? 14 A. Yes. 15 Q. Prepared by Kathleen Lear, comptroller? 16 A. Yes. 17 Q. And that is all on page 38970; is that 18 right? 19 A. Yes. 20 Q. And then if you don't mind turning to page 21 38976, if you could -- the last page of that 22 exhibit. And do you -- maybe not this particular 23 chart, but do you -- have you seen a chart that 24 looks like this for the 33 areas or districts in the 25 Missouri State Public Defender System previously?</p>	<p style="text-align: right;">Page 71</p> <p>1 Q. And then if you go to the percent of 2 capacity, do you see that in the second-to-last 3 column? 4 A. Yes. 5 Q. And that says -- or what percentage does 6 it say -- or I can tell you, I guess, because it's a 7 little hard to trace the line. It's 247.5 percent. 8 A. Yes. 9 Q. Is that right? Okay. And what does that 10 mean, if you -- if you know? 11 A. I don't know. 12 Q. Okay. If I -- so this chart, if I -- if I 13 were to represent to you that this chart is based on 14 the RubinBrown numbers, do you -- do you know what 15 the RubinBrown -- are you familiar with the 16 RubinBrown study? 17 A. I know there was a RubinBrown study, but 18 outside of just the general knowledge that it 19 occurred, I know nothing else about the RubinBrown 20 study. 21 Q. Got it. Fair enough. I think I'm done 22 with that for now. 23 I want to talk, then, about your caseload, 24 and, in particular, the caseload that you have taken 25 on recently in order to try to ensure that your</p>
<p style="text-align: right;">Page 70</p> <p>1 A. I have seen it, yes. 2 Q. Okay. And do you -- and do you see at the 3 top it says, "State public Defender Cumulative 4 Caseload Metrics, Fiscal Year 2017"? 5 A. Yes. 6 Q. And then start date, July 1st, 2016, just 7 below that? 8 A. Yes. 9 Q. And end date June 30th, 2017? 10 A. Yes. 11 Q. And do you see -- sort of in the lower 12 third of the page, you see Area 14, Moberly? 13 A. Yes. 14 Q. And it says number of attorneys, six in 15 the next column? 16 A. Yes. 17 Q. And number of case initiated, 1,547 -- 18 1,547? 19 A. Yes. 20 Q. And then it says, "Minus cases withdrawn." 21 What does that mean, if you know? 22 A. I don't know. 23 Q. Okay. And then it says, "Net new cases, 24 1,367." Is that right? 25 A. Yes.</p>	<p style="text-align: right;">Page 72</p> <p>1 line attorneys meet their ethical obligations. You 2 said it was about 80 cases; is that right? 3 A. Yes. 4 Q. And that's in addition to the other 5 responsibilities that you have in the office, in 6 terms of supervision, budget, hiring, and the like? 7 A. Yes. 8 Q. Is that right? Okay. And you mentioned 9 that it's significantly higher than your caseloads 10 have been previously; is that right? 11 A. Yes. 12 Q. And when we say that, is that -- have 13 there been any other times, since you were the 14 district defender, where your caseload was higher 15 than 80 cases, other than this most recent time 16 period that we're talking about? 17 A. Yes. 18 Q. And what was that time period? 19 A. During fiscal year 2017, I had a lawyer 20 that was on Family Medical Leave, and so I took over 21 the Macon County docket for the time period that he 22 was gone, and at that time, I would have had in 23 excess -- you know, had been around the hundred 24 cases, maybe a little more. During times when -- 25 if -- we've been -- I've been fortunate that I've</p>

18 (Pages 69 to 72)

1 not had a large turnover in attorneys, but whenever
2 there is a turnover attorney, at those times, I
3 typically will take over that county until I am able
4 to hire another lawyer.

5 **Q. Got it. Okay. So other than times where**
6 **you're taking over an additional load, either**
7 **because of ethical concerns for your line attorneys**
8 **or because someone has left the office or is on**
9 **leave, your caseload is typically around 55 or so**
10 **cases; is that right?**

11 A. Yeah. In that area. I -- my criteria for
12 taking cases has to do with the seriousness of the
13 felony, and sometimes there is -- not so much now,
14 but there used to be a geographic consideration,
15 because I would try to save the assistant public
16 defenders from being tied up driving extended
17 distances, if that was at all possible.

18 **Q. Okay. And when you said not so much now,**
19 **can you explain that?**

20 A. Because of the funding for conflict
21 attorneys, that has alleviated some of those cases.

22 **Q. So you -- prior to that, which is -- for**
23 **this fiscal year, 2018, additional funding, prior to**
24 **that, you took on more than your share of conflict**
25 **cases?**

1 A. Well, I don't know that I would describe
2 it as more than my share, but I took conflict cases
3 that required -- that weren't in -- venued in our
4 normal counties or that were not venued close to
5 where an assigned attorney was already practicing.

6 **Q. Got it. Okay. And when -- what**
7 **percentage, if you know -- or what portion -- of**
8 **your caseload -- not speaking of your office's**
9 **caseload but your individual caseload, are**
10 **serious -- let me ask it this way: Are felony cases**
11 **versus misdemeanor or other, you know, probation**
12 **revocation cases? And a ballpark is fine.**

13 A. I'm going to say 90 percent or more.

14 **Q. Okay. So is it fair to say, then, that**
15 **you -- for your individual caseload -- again, not**
16 **the caseload of your office but your individual**
17 **caseload, you take on a higher percentage of the**
18 **more serious cases than the general percentage for**
19 **the line attorneys in your office?**

20 A. Yes.

21 **Q. Okay. And it sounds like we've already --**
22 **you have already testified to this, that that's**
23 **because you want to ensure that your line attorneys**
24 **are able to meet their ethical demand -- the ethical**
25 **requirements to their other clients and, thus, not**

1 **have many -- you know, too high a number of more**
2 **serious cases?**

3 A. Correct.

4 **Q. Okay. And do you have any sense of what**
5 **fraction, portion of your cases -- you said more**
6 **than 90 percent are felony, but what portion of**
7 **those are A and B felony or murder or the more**
8 **serious types of felony charges?**

9 A. Percentage-wise, I don't. I mean, I -- I
10 can tell you how many -- I have -- currently have
11 two murder cases and I have six or seven multi-count
12 A and B -- well, actually, now ten multi-count --
13 what I would classify as serious felony child sex
14 cases.

15 **Q. Got it. So you're not saying you have ten**
16 **A and B felonies, you're saying just -- you have two**
17 **murder cases and ten multi-count child sex cases?**

18 A. Yes.

19 **Q. And, obviously, each of those ten cases**
20 **is, as you've said, very serious?**

21 A. Yes.

22 **Q. What's the maximum penalty that the**
23 **individual in those cases is facing, if you know?**

24 A. Life in prison.

25 **Q. Okay. In each of those ten cases?**

1 A. Well, not in every case, but --

2 **Q. Okay.**

3 A. -- certainly, in the -- as the murder
4 cases are charged right now, there could be a
5 maximum penalty of life. In a couple of the -- of
6 the child sex cases, they're facing -- they could
7 potentially face a life sentence.

8 **Q. Okay. And so that's 12 cases, which is**
9 **already a significant portion of your docket, but**
10 **other than those cases, do you have a general sense**
11 **of how many A, B felonies you have?**

12 A. Well, B felonies, the -- no. In real
13 numbers, I do not. Certainly, the vast majority of
14 my caseload, once you exclude out the serious --
15 what I would classify as serious felony cases would
16 be drug-related crimes, which could be -- well,
17 typically -- what used to be called a B felony, drug
18 distribution or -- but, primarily, I think a larger
19 majority would be drug-related crimes that have to
20 deal with possession.

21 **Q. Got it. Okay.**

22 **And when your caseload spikes, as it has**
23 **now, to 80 or in previous times where it spiked to,**
24 **like, as you said, a hundred, what effect, if any,**
25 **does that have on -- let's start with on your time**

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1 **and ability to communicate with your clients.**
 2 A. It's a true struggle to maintain
 3 communication. My view is that numbers in excess of
 4 80 cases are not sustainable for long-term periods
 5 of time, because I believe that you'll -- that the
 6 individual lawyer will start falling below the
 7 standard of care for representation of clients.

8 **Q. Okay. And that's 80 cases, generally,**
 9 **and, of course, as you've described you have a**
 10 **higher percentage of more serious cases on your**
 11 **docket than is normal?**

12 A. Yes.

13 **Q. Okay. So it sounds, then, like you have**
 14 **serious concerns that you either are at or are**
 15 **approaching a level at which you may not be able to**
 16 **meet your ethical obligations to your clients?**

17 A. My current caseload is not sustainable.

18 **Q. When you say -- sorry.**

19 A. I don't believe that the caseload that I
 20 have right now should be carried and still meet the
 21 standard of representation.

22 **Q. Okay. So to clarify, if you were to**
 23 **continue carrying this caseload for any lengthy**
 24 **period of time, you would feel like you could not**
 25 **meet your ethical obligations to your clients?**

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1 A. I believe that that is not a sustainable
 2 number, yes.

3 **Q. And tell me about -- let's say -- in the**
 4 **world in which your caseload does continue at 80**
 5 **cases, tell me about some of the repercussions that**
 6 **that has for -- we talked about client contact.**
 7 **What other repercussions does that have for your**
 8 **clients -- or would that have for your clients? And**
 9 **I can break it down, if that's helpful or ...**

10 A. Well, I can't -- I mean, here -- I can't
 11 really give you an answer to that question, but to
 12 see that the -- that the -- each individual case is
 13 fact dependent. The work that needs to be done and
 14 the -- and the representation that the clients are
 15 entitled to, that doesn't change. And so what needs
 16 to be done on an individual case will vary from
 17 person to person to person. While I am -- what I am
 18 saying is, that I believe that I -- that as a
 19 lawyer, I've got an obligation to provide each
 20 client with effective representation. When my case
 21 numbers are too high or when any lawyer's case
 22 numbers are too high, they do not have the time to
 23 physically provide effective representation to every
 24 client, and that is -- I believe that's a violation
 25 of the rules, and I don't believe that it's

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1 A. If I -- yes. I would feel that, and I
 2 would be put in a position that I would have to
 3 self-report --

4 **Q. Okay.**

5 A. -- to the Office of Disciplinary Counsel.

6 **Q. Okay.**

7 A. In all fairness, to the clients.

8 **Q. Understood. And are you aware that others**
 9 **of your colleagues -- other district defenders I'm**
 10 **speaking of now -- have self-reported?**

11 A. I don't know if they have or not. I mean,
 12 I suppose that's an option, but I've not talked to
 13 any other district defenders or, in fact, talked to
 14 anyone else about self-reporting. To me, that's an
 15 individual lawyer's obligation to do.

16 **Q. Okay. But it's something that you have at**
 17 **least -- is at least something that you are aware of**
 18 **as a possibility you would need to do, if your**
 19 **caseload continues --**

20 A. If I'm not able to provide effective
 21 representation to my clients, I will do that.

22 **Q. Got it. And, as you've indicated already,**
 23 **if your caseload continues as it is currently, at 80**
 24 **cases, you feel like you will not be able to provide**
 25 **effective representation to your clients?**

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1 fundamentally fair to the individual client.

2 **Q. And the rules that you're speaking of --**

3 A. The Missouri Rules of Professional
 4 Responsibility.

5 **Q. Okay. Also known -- the Missouri Rules of**
 6 **Professional Conduct, same thing; is that right?**

7 A. Yes.

8 **Q. And, in particular, Rule 4, is that --**

9 A. Correct.

10 **Q. -- fair? And is your understanding that**
 11 **that -- that those rules and Rule 4, in**
 12 **particular -- as well as all the other rules, but**
 13 **including Rule 4 governs public defenders --**
 14 **district defenders and line defenders, just as it**
 15 **governs other attorneys in Missouri?**

16 A. Well -- and I don't mean to be
 17 argumentative, but there is no difference between a
 18 public defender and a private lawyer in the State of
 19 Missouri as the rules of professional conduct are
 20 applied. We have the same rules. And I believe
 21 that my opinion is that it is inaccurate to try and
 22 say there's one set of rules for public defenders
 23 and another set of rules for private attorneys.

24 **Q. Your opinion is that those rules govern**
 25 **you -- the --**

20 (Pages 77 to 80)

1 A. It is irrelevant who you are employed by.
 2 That you are -- if you are a lawyer licensed in the
 3 State of Missouri, the rules of professional
 4 responsibility apply to you, and you have an ethical
 5 obligation to each client to provide them with
 6 effective representation. And if you're unable to
 7 do so, then you need to protect the client in any
 8 way -- by any means necessary.

9 **Q. And do you have a duty as a supervisor to**
 10 **ensure that your -- under the rules of professional**
 11 **conduct, that your line attorneys are able to meet**
 12 **their ethical obligations to their clients as well?**

13 A. I believe that I do, yes.

14 **Q. Okay. And -- so we were talking about**
 15 **some of the ways that a caseload that's too high can**
 16 **impact your ability to represent your clients, and**
 17 **we talked about client contact, which is,**
 18 **obviously -- or perhaps you could explain why client**
 19 **contact is so important not just to the client but**
 20 **to the actual legal -- the legal case that each**
 21 **client faces. Why is client contact important?**

22 A. Well, client contact is important on
 23 several different levels. I mean, first and
 24 foremost, if you are representing an individual who
 25 is in custody, that person has to have some

1 confidence, they have to have some trust in their
 2 lawyer, and the only way that you develop a good
 3 attorney-client relationship is by having contact
 4 with your client. You can't do that -- and I
 5 believe it has to be in-person, face-to-face
 6 contact. I don't believe that you can do that by
 7 written letter, and I don't believe that you can do
 8 that by telephone to be effective -- to effectively
 9 represent your client.

10 So, first and foremost, contact, so you
 11 can have a positive attorney-client relationship.
 12 The other is communicating with your client about
 13 all aspects of his case. Explaining to them this
 14 complicated court system and the complicated
 15 environment of a criminal lawsuit is difficult for
 16 people to understand, and it can't -- and, again, I
 17 don't believe that it can be done by writing a
 18 letter or by telephone, and it takes a series of
 19 meetings with individuals before they have some
 20 confidence in the system and in their
 21 representation.

22 **Q. Okay. And are there also things -- and**
 23 **you touched on this a bit, but there are things that**
 24 **you can learn from the client, not just in terms of**
 25 **what you can explain to them, but that you can learn**

1 **that are critical to their case?**

2 A. Sure. You have to have contact with the
 3 clients in order to be able to effectively
 4 investigate their cases. The information that you
 5 receive from your clients through face-to-face
 6 meetings is invaluable, and it takes -- it's always
 7 a process. Some clients are more forthcoming,
 8 others, it takes more time.

9 **Q. Okay. Is one of the other ways that your**
 10 **representation of clients can be impaired when your**
 11 **caseload approaches an unethical level, that you**
 12 **don't have time to conduct investigation into the**
 13 **facts and circumstances of what the offense charged?**

14 A. I believe that there's a real possibility
 15 that that could occur, yes.

16 **Q. And is that something that you're**
 17 **concerned about -- is that one of the things that**
 18 **you're concerned about, if your caseload were to**
 19 **continue at its current level going forward?**

20 A. That is one of the areas that I am
 21 concerned with, as I am with the lawyers -- other
 22 lawyers in the office as a supervisory position. I
 23 mean, the policies of the state public defender's
 24 office and the policies within our office is that we
 25 investigate cases, that we -- and that there are

1 certain minimum standards that I personally impose
 2 on my lawyers on how they conduct their
 3 investigations and contacts with their client.

4 **Q. Okay. And there have been -- it sounds**
 5 **like there have been times, at least where you -- I**
 6 **mean, you've said already there have been times**
 7 **where you've been concerned that the attorneys in**
 8 **your office were not able to meet their ethical**
 9 **requirements as to their individual caseload, if**
 10 **they were to take on new cases?**

11 A. It is -- yes. And as a supervisor, I am
 12 going to do my level best not to put my attorneys in
 13 that position. I -- you know, I have young lawyers
 14 on my staff, they are starting their careers, and
 15 they need an opportunity to practice law and develop
 16 those skills and habits so they can be effective
 17 lawyers. It takes time to do that, and I am -- my
 18 personal opinion is that I'm going to do everything
 19 that I can do to make sure that that happens and
 20 that they are successful in their career.

21 **Q. Okay. Just give me one second, if you**
 22 **could, Mr. Guinn.**

23 Let's go to Exhibit 20.

24 I'm showing you, Mr. Guinn what's been
 25 marked previously as Exhibit 20. Do you recognize

<p style="text-align: right;">Page 85</p> <p>1 that document?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And what is it?</p> <p>4 A. Well, this would be labeled as Rule 4-5.1,</p> <p>5 "Responsibility as partners managers and supervisory</p> <p>6 lawyers."</p> <p>7 Q. Okay. And is that one of the rules of</p> <p>8 professional conduct that we -- one of the portions</p> <p>9 of Rule 4 of the rules of professional conduct that</p> <p>10 we were discussing earlier?</p> <p>11 A. Yes.</p> <p>12 Q. And that, as we have already established,</p> <p>13 is a rule that governs public defenders, just as it</p> <p>14 does every other attorney in the State of Missouri?</p> <p>15 A. Yes.</p> <p>16 Q. And that rule, in particular, applies to</p> <p>17 you, is that right, because you're a supervisor in</p> <p>18 the district -- you are the supervisor in the</p> <p>19 Area 14 office; is that right.</p> <p>20 A. Yes.</p> <p>21 Q. Could you read Subsection B out loud for</p> <p>22 us, the sentence there?</p> <p>23 A. "A lawyer having direct supervisory</p> <p>24 authority over another lawyer shall make reasonable</p> <p>25 efforts to ensure that the lawyer -- other lawyer</p>	<p style="text-align: right;">Page 87</p> <p>1 Q. Okay. Is there -- other than giving</p> <p>2 additional -- you've described this caseload of 80</p> <p>3 that you have currently and your concerns that if</p> <p>4 that continues, you will have to self-report as</p> <p>5 committing an ethical violation. Other than</p> <p>6 assigning those cases to -- or new additional cases</p> <p>7 back to your line attorneys, do you have any other</p> <p>8 means of meeting the caseload in your counties?</p> <p>9 And I can rephrase, if that's confusing.</p> <p>10 A. No. I think I understand your question.</p> <p>11 And the answer would be, I would have to assign</p> <p>12 cases to other lawyers in my office.</p> <p>13 Q. Great. Okay. So there -- and so another</p> <p>14 way of saying it is, there aren't attorneys --</p> <p>15 public defender attorneys from outside of your</p> <p>16 district that could come in and take a good portion</p> <p>17 of the cases from your office's hands and represent</p> <p>18 clients in those cases, other than -- you know, an</p> <p>19 occasional conflict case or something, but in terms</p> <p>20 of any significant number of cases in your office?</p> <p>21 A. I don't believe there is, but that would</p> <p>22 be a discussion that would have to be with the upper</p> <p>23 management.</p> <p>24 Q. Certainly, you don't have the authority to</p> <p>25 ask an attorney from another office to come in and</p>
<p style="text-align: right;">Page 86</p> <p>1 conforms to the rules of professional conduct."</p> <p>2 Q. And then if you could, could you read C</p> <p>3 and -- Subsection C and Subsection C(1), the one</p> <p>4 underneath C, just those two sentences?</p> <p>5 A. "A lawyer shall be responsible for another</p> <p>6 lawyer's violation of the rules of professional</p> <p>7 conduct if (1) the lawyer orders, or with knowledge</p> <p>8 of the specific conduct, ratifies the conduct</p> <p>9 involved."</p> <p>10 Q. Okay. So is it fair to say that -- and so</p> <p>11 do you believe that this -- is it your opinion that</p> <p>12 this rule applies to you -- every portion of this</p> <p>13 rule applies to you as director of -- district</p> <p>14 defender of --</p> <p>15 A. This rule does apply to me as a supervisor</p> <p>16 of other attorneys.</p> <p>17 Q. Okay. And is it fair to say that one of</p> <p>18 the reasons that you've taken on this additional too</p> <p>19 high of caseload for yourself is because you're</p> <p>20 concerned that, otherwise, you would violate your</p> <p>21 role as a supervisor -- your duties and</p> <p>22 responsibilities as a supervisor to ensure that your</p> <p>23 line attorneys comply with the rules of professional</p> <p>24 conduct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 88</p> <p>1 take those cases?</p> <p>2 A. I do not have the authority to send cases</p> <p>3 to another office.</p> <p>4 Q. And are you generally aware of caseload</p> <p>5 concerns and problems in other district offices in</p> <p>6 MSPD?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So then just circling back to the</p> <p>9 choice you're faced with, is it fair to say that</p> <p>10 that choice is -- you can either take on cases for</p> <p>11 yourself -- additional cases to your own caseload,</p> <p>12 which cause you to be concerned about violating your</p> <p>13 ethical responsibilities to your clients, or you can</p> <p>14 assign those cases to your line attorneys, in which</p> <p>15 case you're concerned about them violating their</p> <p>16 ethical obligations to their clients?</p> <p>17 A. I think both of those are potential</p> <p>18 options. Also, what we originally did in</p> <p>19 Randolph County was putting people on wait lists</p> <p>20 until case note -- until lawyers were able to work</p> <p>21 through cases already assigned to them so that they</p> <p>22 had -- their time would be freed up to take new</p> <p>23 cases.</p> <p>24 Q. Okay. Is there any -- other -- so that's</p> <p>25 an additional option. Any other option available to</p>

22 (Pages 85 to 88)

1 you on a regular basis, other than those -- taking
2 on too many cases for yourself, giving your
3 line attorneys too many cases, or a wait list that
4 would be available to you in your role as a district
5 defender in Area 14?

6 A. At this time, I don't know of any other
7 options available.

8 Q. Okay. And what concerns, if any -- I
9 mean, you mentioned some concerns, especially about
10 folks who are in custody being on a wait list. What
11 concerns, if any -- if you could explain them
12 further -- do you have about putting additional
13 people -- additional defendants who are eligible for
14 public defender services on wait lists to receive
15 those services?

16 A. Well -- I mean, as far as practical
17 considerations are concerned, the longer that cases
18 lie without representation -- I mean, you run the
19 risk of witnesses favorable to our clients leaving,
20 disappearing. You know, any number of practical
21 things can occur, which would be detrimental to
22 the -- to our client's ability to have a fair trial.
23 It's never good to allow -- you know, for people to
24 go for weeks or months without having anyone working
25 on their case. So I -- that's a big concern to me,

1 their circumstances were in those cases, and there
2 was a discussion as to, Are you really overloaded?
3 And after that discussion, we made the determination
4 that they legitimately did not feel they could meet
5 their ethical obligations with their current case
6 numbers.

7 Q. And you've described daily interaction
8 with the attorneys in your office. It sounds like
9 you're a hands-on supervisor; is that fair?

10 A. I believe so, yes.

11 Q. So in addition to their telling you that
12 they felt like they couldn't ethically take on more
13 cases, did you have an independent knowledge or
14 opinion about their caseload and whether or not they
15 were accurate in their representation about their
16 ability to take on more cases?

17 A. I looked at their caseload, I looked at
18 the type -- the number -- not just the number but
19 the type of cases they had, and after looking at it
20 and in talking with them, I had to agree that at
21 that time, they shouldn't take on new cases.

22 Q. So, in other words, you didn't just take
23 their word for it that they were busy -- I mean, you
24 believed them because you knew them and their
25 experience, but you also independent -- you also

1 that we're not meeting our -- the constitutional
2 standard to provide effective representation for
3 people, when we have to put them on a wait list, and
4 they -- if they're having to wait for an extended
5 period of time.

6 Q. And, obviously, despite that concern, you
7 created a wait list, which was just for a short
8 period of time, presumably -- was that because you
9 felt like you had no other option?

10 A. Well, I don't believe we had any other
11 option, and I -- again, you know, my -- the two
12 lawyers involved came to me and said, We're at our
13 max right now; we can't take anything new. And I
14 have to represent their evaluation of their
15 situation.

16 Q. And did they say, We can't take anything
17 new, because if we do, we'll violate our ethical
18 obligations to our clients?

19 A. I think -- was it phrased in those?
20 Terms? No.

21 Q. Okay.

22 A. But that -- I mean, that was our
23 discussion, is how many -- you know, we were -- we
24 looked at how many cases they had, we looked at what
25 type of cases they had going, we looked at what

1 looked at their case numbers and came to a
2 determination that they were correct that they could
3 not ethically take on more cases. Is that fair?

4 A. Yes. I looked at their inventory of cases
5 and -- I mean, it's -- the protocol is that we --
6 it's not just the number of cases, it's the type.
7 And, also, I have to look at the age of the cases,
8 that if the case -- if the cases are getting
9 chronological age on them, that they've been -- you
10 know, they're six months, eight months into the
11 cases, I mean, that's a big consideration also.

12 Q. And you touched on some of this
13 previously, but what is the problem if the case
14 is -- has been going on for six or eight or more
15 months?

16 A. Well, again -- I mean, there could be any
17 number of -- as a practical matter, I mean, you run
18 the risk of evidence favorable to the client
19 evaporating, you know, witnesses being unavailable.
20 I mean, there's just any number of negative aspects
21 that can happen to the client. And I suppose
22 emotionally it's not good for the clients to have
23 these cases hanging over their heads for long
24 periods of time. They become dissatisfied and
25 it's -- and it's just -- I look at it as if my

<p style="text-align: right;">Page 93</p> <p>1 mother or my brother or sister was in the same 2 position. Would I want them to be treated in such a 3 way, that they are waiting for months to have a 4 resolution of their matter? And I have to believe 5 that's not how I would want my family to be treated. 6 Q. And as part of the concern -- of course, 7 in addition to your general concern about your 8 client's satisfaction -- which, of course, any 9 lawyer would be concerned about it. Is part of the 10 concern, if your -- about the rapport and 11 relationship that you have with your clients, which 12 is necessary to conduct -- to fully advocate on 13 their behalf at pretrial and at trial? 14 A. Yes. 15 Q. Okay. And so it sounds like one of the -- 16 is one of the ways that attorneys handle -- 17 attorneys in your office, yourself and the 18 line attorneys, handle caseloads that are quite 19 large, is to seek continuances in order to gather 20 more information and do the investigation necessary 21 to work up the case? 22 A. Yes. 23 Q. And your concern is that those 24 continuances can lead to adverse results for your 25 clients or --</p>	<p style="text-align: right;">Page 95</p> <p>1 mean, it's -- the use of video as a police 2 technique, yeah, it's more common now. There are 3 body cams, there is in-car cameras, there are 4 miniaturized cameras that the confidential 5 informants are being given to use. So, yes, video 6 is a very important part of many different kinds of 7 cases. 8 Q. Okay. Just give me a second here. 9 I want to ask you about lineups, 10 Mr. Guinn, if I could. I know it depends, in part, 11 on the geographic differences in the five counties 12 that you work in, but, typically, are there 13 lineups -- are there in-person lineups held, at 14 least in some cases in your district? 15 A. Typically, no. 16 Q. Okay. And so how are identifications 17 done? 18 A. Normally, photo arrays are given to 19 individuals. I can only recall maybe one instance 20 where -- and it really wasn't even a lineup, it was 21 a sheriff's deputy driving someone by. I mean -- 22 and them looking out the window. They don't do 23 in-person lineups. 24 Q. Okay. I want to ask you about post trial 25 if I could. In your district -- at what point does</p>
<p style="text-align: right;">Page 94</p> <p>1 A. I believe that -- I believe that they 2 contribute -- can contribute to negative outcomes 3 for the client. 4 Q. And it's not that your attorneys are 5 seeking continuances because they feel like it just 6 for fun. I mean, the reason that they're doing so 7 is because their caseload is too high. Is that 8 correct? 9 A. Well -- yes. I think it's -- you know, 10 certainly, it is a combination of caseload, and, 11 also, it's -- again, this is a dynamic process. 12 When you are trying to prepare a case for trial, 13 there is more to it -- I mean, investigation is one 14 aspect of it, but there are -- you know, there are 15 depositions, there is preparation -- you know, for 16 trial, there's pretrial motions -- there's a whole 17 series of work that needs to be done, and if you 18 have too many cases, you are unable to effectively 19 do all of the steps necessary to effectively 20 represent your client. 21 Q. Is surveillance video something that is 22 important in a number of your cases? And I'm 23 talking about, like, store video -- you know, videos 24 from store surveillance and the like. 25 A. I mean, it plays a part in some cases. I</p>	<p style="text-align: right;">Page 96</p> <p>1 representation by the trial attorneys in your office 2 end? 3 A. After -- well -- in a trial context, we 4 would go through trial, through sentencing. We 5 would file a post-trial motion for new trial, and 6 then if those are denied, then the case would -- a 7 notice of appeal would be filed, and that case would 8 be sent to the appellant division. 9 Q. Okay. And who files the notice of appeal? 10 A. The trial attorney does. 11 Q. Okay. And then your office sends the case 12 on to the appellant division; is that right? 13 A. Yes. 14 Q. And if there were a motion for a new 15 trial, who would file that motion? 16 A. The trial attorney. 17 Q. Okay. I want to talk about sentencing for 18 a minute. Is that something that your office spends 19 time preparing for, sentencing of your clients? 20 A. In the entire trial sequence, as a general 21 rule, the preparation for a final sentencing is -- 22 probably the least amount of time is spent on that. 23 Most of our cases have a -- sentencing assessment 24 report is ordered by the court, and the individual 25 attorney will go over with the client what to expect</p>

24 (Pages 93 to 96)

1 in the sentencing assessment report phase, but
2 outside of that, it's pretty limited as to the
3 other -- any other work being done to prepare for
4 sentencing.

5 **Q. Would you -- in an ideal world, would you**
6 **like to spend more time, you and the attorneys in**
7 **your office, on preparing for sentencing?**

8 A. I think it would be helpful, yes.

9 **Q. And do you think that could have positive**
10 **results for the sentences that your clients would**
11 **receive?**

12 A. I think that it would -- there's a great
13 probability that that would help in final
14 sentencings of clients.

15 **Q. And is one of the concerns -- when either**
16 **your caseload or the caseload of your attorneys gets**
17 **to this unethical or borderline unethical area that**
18 **we've been discussing, is one of the concerns that**
19 **you then have even less time for preparing for**
20 **sentencing proceedings?**

21 A. I think that's a consideration, yes.

22 **Q. Okay. Now, you talked about the -- your**
23 **80 cases, and just returning to that for a second.**
24 **And you said -- we discussed at length about your**
25 **concerns, that if that continues, you'll need to**

1 **fair to say?**

2 A. I think that's a fair statement, yes.

3 **Q. In other words, if the attorneys in your**
4 **office who have two to four years of experience, as**
5 **four of the five line attorneys do, if they had your**
6 **caseload -- not just the number, as you said, but**
7 **80, and many of which are serious cases, you would**
8 **be even more concerned about their ability to handle**
9 **that caseload ethically; is that fair?**

10 A. I would be very concerned about their
11 ability to handle a large caseload of serious felony
12 offenses.

13 **Q. Okay. Which is part of the reason you**
14 **have taken on these additional cases for yourself?**

15 A. That is the reason, yes.

16 **Q. Okay. Do you know -- and it's okay if you**
17 **don't -- the number of open cases your office has**
18 **currently? I may have asked that already, so**
19 **forgive me if I did, but ...**

20 A. And I looked at the number before -- I
21 believe that -- and this is kind of a guess on my
22 part, but I believe that it's around -- it's a
23 little over -- it's around 500, I'm pretty sure.

24 **Q. Okay. So if it's around 500, and you have**
25 **80, that means that there are 420, approximately,**

1 **self-report and you won't be able to ethically**
2 **represent your clients. And, obviously, that's --**
3 **that's despite the fact that you have almost 30**
4 **years of experience as a criminal attorney in a law**
5 **firm setting, and then as -- in a public defender's**
6 **office; is that right?**

7 A. Yes.

8 **Q. In other words, you're an extraordinarily**
9 **experienced attorney --**

10 A. Well, I don't know if I would say
11 "extraordinarily," but I am -- I am an experienced
12 attorney, and I think that I -- because of my
13 experience, I do have the ability to look at the
14 cases that are -- that come into our office and that
15 I can make decisions about, Are we being effective
16 in how we are representing our clients?

17 **Q. Got it. And I appreciate that. I'm not**
18 **trying to -- your humility. I -- in addition to**
19 **knowing -- for that experience, being that you have**
20 **a good understanding of what your office is and is**
21 **not able to ethically handle, is it also fair to say**
22 **that you, with those almost three decades of**
23 **experience, you -- individuals with only two years**
24 **of experience would be able to handle ethically**
25 **fewer cases than you're able to handle? Is that**

1 **cases split among the other attorneys your office;**
2 **is that right?**

3 A. Yes.

4 **Q. Which means that each of those**
5 **attorneys -- if they're divided -- on average, those**
6 **five attorneys then have 84 or more than 80 cases on**
7 **their dockets?**

8 A. I would say that's pretty close.

9 **Q. Okay. So even with your taking these**
10 **additional cases to the level where you're concerned**
11 **about your own compliance with the ethical rules,**
12 **the attorneys in your office still have about 80**
13 **cases on their own dockets?**

14 A. I think that's pretty close across the
15 board. And understanding that this is a mixture of
16 cases. It's not -- they're not all serious
17 felonies. Primarily, they are felony grade
18 offenses, but there are a mixture of misdemeanor and
19 probation violation cases in those numbers.

20 **Q. And those numbers, the 80-plus cases on**
21 **each of those attorneys dockets, you know, on**
22 **average, would actually be significantly higher if**
23 **the Randolph County -- if there weren't this sort of**
24 **vague -- what's happening in the Randolph County**
25 **prosecutor's office?**

1 A. If -- and I would -- if Randolph County
2 was filing cases at the rate in which has typically
3 historically been done, we would be in a very
4 different situation. We would probably be back to
5 the wait list and looking at ways to handle the
6 volume.

7 **Q. And, again, you -- although you can't**
8 **predict because you don't charge the cases, you**
9 **anticipate that that is going to -- that the**
10 **Randolph County prosecutors are going to pick up**
11 **cases at some point?**

12 A. I think historically it would -- I would
13 agree that the numbers are going to increase.

14 **Q. Okay.**

15 MR. SCHERZER: Can we go off the record,
16 just take a quick break for a second?

17 VIDEOGRAPHER: The time is 11:13 a.m., and
18 we are off the record.

19 (A recess was taken.)

20 VIDEOGRAPHER: The time is 11:21 a.m., and
21 we're back on the record.

22 MR. SCHERZER: So thank you very much, Mr.
23 Guinn. That's all of the questions I have for you.
24
25

1 supervised a number of attorneys that were in the
2 firm?

3 A. Actually, I did not. I had my own
4 practice. I did supervise -- I had four legal
5 assistants, so I -- they were who I supervised.

6 **Q. And if I understood your testimony**
7 **correctly, in your current position as a district**
8 **defender, you're more of a hands-on supervisor.**

9 A. I think that's fair, yes.

10 **Q. In what ways would you describe yourself**
11 **as being hands-on? I know you mentioned that you**
12 **have a very open-door policy in a small office. Are**
13 **there any other ways that you train or mentor the**
14 **attorneys that you supervise?**

15 A. We do have monthly staff meetings. In
16 those staff meetings, we look at cases, we talk
17 about -- if they have upcoming trials, where they're
18 at in their trial preparation, and we also try to
19 review what we believe to be important cases that
20 might have come out of the court of appeals. So far
21 as my observations of the lawyers, I think -- it's
22 fortunate that I do have a large number of cases,
23 because I'm in court with most of them at least once
24 or twice a month because we have the same dockets.
25 So I get to have the opportunity to see how

1 CROSS-EXAMINATION

2 BY MR. RAMSEY:

3 **Q. I have a handful of questions. Again, my**
4 **name is Steven Alan Ramsey, and I represent**
5 **Governor Greitens and the State of Missouri. I will**
6 **try not to interrupt you as you're answering various**
7 **questions. Sometimes I get impatient, so I**
8 **apologize in advance for that.**

9 **Before you attended law school, was there**
10 **a gap between your undergraduate degree and law**
11 **school, or did you go straight through?**

12 A. There was a gap.

13 **Q. And what did you do during that gap?**

14 A. I worked for Brady's Columbia Glass and
15 Paint Company.

16 **Q. What type of work was that?**

17 A. I ran construction jobs for Brady's. They
18 were a commercial glass installation company.

19 **Q. And your undergraduate degrees, what was**
20 **it in?**

21 A. Agriculture economics. I actually did law
22 school and undergrad at the same time.

23 **Q. Wow. I wish they had that nowadays.**

24 **Turning to your history of supervision, if**
25 **you will, as a partner at the firm, I presume you**

1 individual attorneys are handling a specific docket
2 or how their -- kind of how their cases are
3 progressing through a docket.

4 **Q. And if you do not have an answer to this**
5 **next question, that's fine. Do you have a sense of**
6 **whether the way you supervise attorneys in your**
7 **offices differ similar to any district defenders**
8 **that you know?**

9 A. I don't know.

10 **Q. Turning to the e-mail that you sent -- I**
11 **believe it was mentioned about once a week -- when**
12 **did that process begin? Was that alongside the**
13 **October letters that you sent out, or has that been**
14 **a process that you've done for some time?**

15 A. The e-mails to the lawyers regarding their
16 caseloads, that started in October.

17 **Q. And it's still going on today -- or**
18 **currently presently?**

19 A. Yes.

20 **Q. And in your office, are you the one to**
21 **decide how cases are assigned, or do you give that**
22 **responsibility to another staff member?**

23 A. Each lawyer is assigned a county. The
24 lawyer that is assigned that county is responsible
25 for reviewing the applications that are presented in

<p style="text-align: right;">Page 105</p> <p>1 that county, and then they give those applications</p> <p>2 to the legal assistant who opens the cases and</p> <p>3 enters their appearance. The only time that I</p> <p>4 become involved, generally, in that practice has to</p> <p>5 do if it's a sex offense or if it's a B felony</p> <p>6 offense that's a violent felony or a murder, then</p> <p>7 the attorneys will come and talk to me about the</p> <p>8 case so that I'm aware of it, and then a decision is</p> <p>9 made as to who will be assigned that case.</p> <p>10 Q. And so if I understood you correctly, your</p> <p>11 attorneys in the various counties, they're the first</p> <p>12 line, if you will, in terms of the screening for the</p> <p>13 applications for public defender services?</p> <p>14 A. That's correct. And I will caveat that.</p> <p>15 There will be times when applications are faxed into</p> <p>16 the office or people may come into the office, and</p> <p>17 then the legal assistants will review those. If</p> <p>18 they have questions, they'll come see me or some</p> <p>19 other attorney, but since the legal assistants have</p> <p>20 been trained as to the guides for determining</p> <p>21 representation, they are allowed to make a</p> <p>22 determination if we're going to accept a case, and</p> <p>23 if they don't know, then they will come and ask a</p> <p>24 lawyer.</p> <p>25 Q. Aside from the application itself -- and I</p>	<p style="text-align: right;">Page 107</p> <p>1 primarily based on the criteria that they will</p> <p>2 either list an asset that takes -- that makes them</p> <p>3 ineligible or they will list an income that makes</p> <p>4 them ineligible. And in those situations, we will</p> <p>5 send a -- a rejection letter, denial letter to that</p> <p>6 individual advising them that they do have the right</p> <p>7 to request an indigency hearing with the circuit</p> <p>8 judge, and many times, people do, and then the judge</p> <p>9 will make a determination as to whether or not he's</p> <p>10 going to appoint in some case.</p> <p>11 Q. Switching gears slightly, the two</p> <p>12 attorneys that you have assigned to Randolph County,</p> <p>13 those two attorneys came to you, whether it was --</p> <p>14 it was shortly after the Hinkebein decision, or</p> <p>15 whenever the date occurred, they came to you and</p> <p>16 said, Hey, we're really slammed, could you not</p> <p>17 provide us any more cases.</p> <p>18 A. In -- that's not exactly how it happened.</p> <p>19 I -- I sent an e-mail out to all of the lawyers to</p> <p>20 say, you know, they've all -- they had all seen the</p> <p>21 Hinkebein decision, and I said, you know, we need</p> <p>22 to -- I need to know from you if you are in a</p> <p>23 position where you don't feel that you can meet the</p> <p>24 standards of representation, and you need to tell</p> <p>25 me, and I -- and I -- as part of that e-mail, I</p>
<p style="text-align: right;">Page 106</p> <p>1 believe I've seen a second sheet that provides some</p> <p>2 guidelines on determining indigency. Does your</p> <p>3 office or do you personally have any type of an</p> <p>4 independent verification system, or do you, by and</p> <p>5 large, rely on the application itself?</p> <p>6 A. Well, the process we use -- and I guess</p> <p>7 the short answer is, yes, we rely on the</p> <p>8 application. The application is reviewed. If it is</p> <p>9 incomplete, then the client is contacted. If</p> <p>10 it's -- if it is a situation where they simply just</p> <p>11 sign their name and sign the application, that will</p> <p>12 probably be denied, since they've not -- they're not</p> <p>13 filling out the application completely. If the</p> <p>14 individual completes the application, primarily, and</p> <p>15 signs it that they have done so, then I'm going to</p> <p>16 rely on what they've put in their application, and</p> <p>17 further investigation is not going to happen,</p> <p>18 probably.</p> <p>19 Q. And do you have a sense for -- this isn't</p> <p>20 a term of art, but the rejection rate for applicants</p> <p>21 or the indigency rate -- do you have a sense of how</p> <p>22 often your office rejects applications?</p> <p>23 A. I don't have numbers or percentages. Do</p> <p>24 we accept -- I can say we accept more applications</p> <p>25 than we reject. We do reject applications, again,</p>	<p style="text-align: right;">Page 108</p> <p>1 said, you know, don't do it by this e-mail; you'll</p> <p>2 come and see me individually. Because I -- I didn't</p> <p>3 want to be in the position where people didn't</p> <p>4 feel -- or they felt it would be a negative impact</p> <p>5 on their employment if they said, Hey, I need some</p> <p>6 help. And so those lawyers individually came and</p> <p>7 talked to me.</p> <p>8 Q. And was that before or after these letters</p> <p>9 that were sent to the various judges in your</p> <p>10 district?</p> <p>11 A. I believe that I sent the e-mails pretty</p> <p>12 close to the same time. So I'm going to say that</p> <p>13 they were probably -- the letters to the courts were</p> <p>14 probably sent out first, and then the e-mails were</p> <p>15 sent -- or contemporaneously. I mean, it was all</p> <p>16 very close in time, but which came first, I can't</p> <p>17 tell you.</p> <p>18 Q. And so turning to Plaintiff's Exhibits 29,</p> <p>19 30, and 31, I'm going to be speaking about them</p> <p>20 generally. So you sent these letters around the</p> <p>21 same time you sent the e-mail to your attorneys</p> <p>22 asking -- or at least in the hindsight of the</p> <p>23 Hinkebein decision?</p> <p>24 A. Correct.</p> <p>25 Q. And am I understanding each of these</p>

27 (Pages 105 to 108)

<p style="text-align: right;">Page 109</p> <p>1 letters -- and we can look at them one at a time, if</p> <p>2 we have to, but at the time you sent these letters,</p> <p>3 there was a belief by yourself or by the attorneys</p> <p>4 that you supervise that they were all operating</p> <p>5 outside of the rules of professional conduct.</p> <p>6 A. There was a belief on my part that they</p> <p>7 were. Quite frankly, I expected every lawyer in my</p> <p>8 office to come into me and say, I've got a problem.</p> <p>9 That didn't happen, but didn't change the fact that</p> <p>10 I still met and talked with them about their</p> <p>11 caseloads. One of the motivating factors behind</p> <p>12 this was my belief that there was -- that I was</p> <p>13 going to have every lawyer in my office contact me,</p> <p>14 and I believe that my office is a part of the court</p> <p>15 system and that we've got an obligation to be up</p> <p>16 front with the judges, and I've always maintained</p> <p>17 that -- tried to maintain that kind of relationship.</p> <p>18 So these letters were sent out to the</p> <p>19 judges so -- for want of a better way to describe</p> <p>20 it -- we didn't blindside them that we have a</p> <p>21 problem. I was very pleased that the judges, for</p> <p>22 the most part, were pretty positive in their</p> <p>23 response in wanting to accomplish a couple of goals.</p> <p>24 I think one is to treat the clients fairly, but,</p> <p>25 also, to make their courts as efficient as they</p>	<p style="text-align: right;">Page 111</p> <p>1 discussion about how many cases he was filing -- the</p> <p>2 prosecutor's office in Randolph County was filing.</p> <p>3 Q. Switching gears again, you testified that</p> <p>4 your office -- you and your office, pardon me, have</p> <p>5 been fairly aggressive in filing pretrial motions,</p> <p>6 and I'm curious where that trend comes from, if you</p> <p>7 will. Is that something that you as a district</p> <p>8 defender has placed an emphasis on, the pretrial</p> <p>9 motions, or is it just something that the attorneys</p> <p>10 are doing on their own?</p> <p>11 A. It's me.</p> <p>12 Q. Okay. And how have you gone about, I</p> <p>13 guess, effectuating that custom or that expectation?</p> <p>14 A. Early on when a new lawyer -- I mean, I</p> <p>15 guess it's -- some of it stems from our monthly</p> <p>16 staff meetings, some of it is generated there. When</p> <p>17 new lawyers come into our office, certainly, they</p> <p>18 receive very good training from the state public</p> <p>19 defender's office, but I have expectations about --</p> <p>20 I want them to look at cases and to evaluate that we</p> <p>21 have a basis for filing a motion to suppress or to</p> <p>22 do the work necessary to do -- because I believe</p> <p>23 that's very important in the representation of</p> <p>24 criminal cases. We win more cases based on motion</p> <p>25 work than we do on jury trial work. And -- so</p>
<p style="text-align: right;">Page 110</p> <p>1 could to try to accommodate.</p> <p>2 Q. And you mentioned that you utilize -- I</p> <p>3 believe it was the Boone County letter as a template</p> <p>4 of sorts while you were drafting this letter. And I</p> <p>5 don't have the Boone County letter in front of me,</p> <p>6 but what would you say were the major changes? Was</p> <p>7 there a change in tone that you thought was more</p> <p>8 appropriate for your counties or ...</p> <p>9 A. I think there -- and, honestly, I don't</p> <p>10 remember the Boone County letter either. I think</p> <p>11 there was a change -- a slight change in tone. I</p> <p>12 think that there was some aspects of the</p> <p>13 Boone County letter that just didn't apply to the</p> <p>14 courts that my office services, so we took it out.</p> <p>15 Q. And turning to your relationship with the</p> <p>16 Randolph prosecutor, was -- am I understanding your</p> <p>17 testimony correct to suggest that after this letter</p> <p>18 was sent, there were no conversations with the</p> <p>19 Randolph prosecuting attorney in relation to this</p> <p>20 letter or relation to the caseload work concerns?</p> <p>21 A. No. And we didn't meet -- if there was</p> <p>22 any kind of conversation, it certainly would have</p> <p>23 been in passing. It wasn't something where we were</p> <p>24 discussing that there was any kind of problem with</p> <p>25 case levels between the offices or there was no</p>	<p style="text-align: right;">Page 112</p> <p>1 that's where it's come from. I believe that it's a</p> <p>2 very important aspect of the cases and that that's</p> <p>3 work that has to be done.</p> <p>4 Q. And, again, if you do not have a sense,</p> <p>5 it's completely fine, but do you have a sense of</p> <p>6 whether or not your office is more aggressive in</p> <p>7 pretrial motions than any other district defender's</p> <p>8 office --</p> <p>9 A. Oh, I don't know.</p> <p>10 Q. Okay.</p> <p>11 A. I don't know that.</p> <p>12 Q. Do you have any rules in place or any</p> <p>13 expectations concerning the earliest point in</p> <p>14 representation when you or your attorneys that you</p> <p>15 supervise may counsel a defendant to accept a plea</p> <p>16 deal?</p> <p>17 A. Yes. I mean -- and I have to speak in</p> <p>18 generality. The general rule is that we don't do --</p> <p>19 talk about pleas until we have discovery from the</p> <p>20 state and that discovery has been reviewed and</p> <p>21 reviewed with the client, and we're not going to</p> <p>22 talk about offers until we do that. Sometimes that</p> <p>23 involves the preliminary hearing. I'm not big on</p> <p>24 waving preliminary hearings because I think it's an</p> <p>25 opportunity for the client to hear the evidence,</p>

28 (Pages 109 to 112)

<p style="text-align: right;">Page 113</p> <p>1 it's an opportunity to see the strength of the 2 state's case. So the general rule is, is that we 3 don't talk about doing any pleas prior to receiving 4 discovery in some form. There is times when the 5 clients don't want to do that. There are times when 6 clients have been sitting in jail, and they want to 7 get out, they want to take a deal. We try to avoid 8 those situations, but, ultimately, it is the 9 client's choice. And so I do believe that it's 10 necessary that we at least explain what the deal is, 11 what it means before they actually enter into a 12 plea, so I think that is the exception more than the 13 rule.</p> <p>14 Q. And out of the ten or so trials that you 15 could recollect within the last fiscal year that 16 your office has tried, do you have a sense or a 17 policy or custom of never sending an attorney into a 18 trial alone? Said in another way, do you send 19 second chairs to trial?</p> <p>20 A. We do, except I'm the one who breaks the 21 rule on that. I don't typically have a second chair 22 with me because I take my -- I do take the 23 investigator with me. Again, it depends on the 24 case, but, yes, all of the other lawyers will always 25 have a second chair.</p>	<p style="text-align: right;">Page 115</p> <p>1 appears to be like this before?</p> <p>2 A. Yes.</p> <p>3 Q. But not necessarily for the time listed?</p> <p>4 A. It could have been, I'm just not sure.</p> <p>5 Q. And in addition, opposing counsel had you 6 look at a number of the numbers in the Moberly 7 column -- or row, pardon me. Is it my 8 understanding -- did I understand your testimony 9 correctly that you cannot independently verify what, 10 you know, cases initiated means or the percent of 11 capacity is, et cetera?</p> <p>12 A. The cases initiated, I understand what 13 that is. The rest of the criteria here, since I 14 don't -- quite honestly, I don't deal with that, so 15 I don't know what that really means. Of the cases 16 initiated by fiscal year, I understand what that 17 is -- I mean, because I look at that quite 18 frequently.</p> <p>19 Q. Okay. Now I'm going to shift more into 20 form questions. Those are my free willing 21 questions, if you will, and so I'm going to take 22 probably 20 steps back.</p> <p>23 Not in preparation for this deposition, 24 but in terms of conversations you've had concerning 25 caseload or workload concerns, have you spoken to</p>
<p style="text-align: right;">Page 114</p> <p>1 Q. Is that the same for bench trials as well?</p> <p>2 A. No. Bench trials, typically, they will 3 not have a second chair.</p> <p>4 Q. Could you help me understand a bit more of 5 the substantial nature of how many cases are 6 dismissed or ultimately disposed of? I think you 7 testified that a substantial number are dismissed 8 but ...</p> <p>9 A. And I do not know statistics on that. 10 It's not something that has been tracked. I think 11 that's going to change in the future, but we just 12 never tracked it before.</p> <p>13 Q. Turning briefly to the previously marked 14 Plaintiff's Exhibit 21. I believe it's the Missouri 15 State Public Defender Commission fiscal year report 16 type of -- yeah.</p> <p>17 I'm sorry. Did you testify that you had 18 seen this document before?</p> <p>19 A. I don't think that was -- I don't think 20 that's what I was asked. They showed me page -- it 21 would be your page 38976 and asked if I had seen 22 that. I had seen this -- a form of this before. I 23 can't tell you that it was from 2017, but I've seen 24 it before.</p> <p>25 Q. Okay. And so you've seen information that</p>	<p style="text-align: right;">Page 116</p> <p>1 any organizations about those concerns?</p> <p>2 A. You mean outside of the Missouri State 3 Public Defender System?</p> <p>4 Q. Yes, sir.</p> <p>5 A. No.</p> <p>6 Q. And I presume, after reviewing the 7 letters, that you've spoken to a number of judges 8 concerning workload and caseload concerns?</p> <p>9 A. Yes.</p> <p>10 Q. Have you talked to the press at all?</p> <p>11 A. No.</p> <p>12 Q. Okay. Do you have any public defenders 13 that are on call 24/7?</p> <p>14 A. No.</p> <p>15 Q. Have you, while being at the Missouri 16 State Public Defender System, ever been denied a 17 deposition that you felt was necessary for your case 18 due to funding?</p> <p>19 A. No.</p> <p>20 Q. Have you as a supervisor ever denied a 21 deposition request from one of the attorneys that 22 you supervise on the account of lack of funding?</p> <p>23 A. No.</p> <p>24 Q. Are the same answers true for expert 25 testimony? Have you ever been denied an expert when</p>

29 (Pages 113 to 116)

1 you thought an expert was necessary for your case?

2 A. No.

3 **Q. Have you ever denied an expert testimony**
4 **to one of the attorneys that you supervise that they**
5 **felt were necessary to their case?**

6 A. Based on funding?

7 **Q. Based on funding.**

8 A. Not based on funding.

9 **Q. Since joining the public defender system,**
10 **caseloads and workloads have been a persistent**
11 **concern. Am I understanding your testimony**
12 **correctly on that front?**

13 A. Yes.

14 **Q. And as a district defender, it's my**
15 **understanding that you have discretion to implement**
16 **local policies or local trainings or things to**
17 **supervise and run your office. Is that also**
18 **correct?**

19 A. Yes.

20 **Q. Have you instituted any new policy -- any**
21 **new local policies for your office since becoming**
22 **the district defender?**

23 A. No. I mean, all of our policies are based
24 off of the policies and procedures manuals that --
25 from the -- that the state office has put together.

1 the office -- I mean, lawyer-wise did track their
2 time. How that information was used after our --
3 after we tracked the time, I do not know how --
4 what -- how it was used.

5 **Q. Currently, are you tracking time in**
6 **five-minute increments?**

7 A. No.

8 **Q. And so the extent of your timekeeping now,**
9 **is it simply just the -- how many hours an attorney**
10 **has worked per day, essentially?**

11 A. Yes.

12 **Q. Do you have a sense for when the last**
13 **period of the five-minute tracking of time occurred?**
14 **And if you don't, that's more than fine.**

15 A. I can't tell you when we stopped doing
16 that. My recollection is it was, like, December of
17 2016, but I could be way off. I know we're not
18 doing it now.

19 **Q. Got it. And this is a foundational**
20 **question I should have asked a long time ago. What**
21 **is your understanding of how your district and how**
22 **your office measures a case? And so when I say "a**
23 **case," what does that entail to you?**

24 A. It's based primarily on the court cases.
25 Each individual -- in other words, an individual, if

1 Any policies in my office, so far as individuals,
2 you know, would be something like, you know, you
3 have to be at work at 8:30, you take -- you know,
4 when you go to lunch, those kind of things, but
5 those aren't written policies because -- I mean, we
6 use the state guidelines as the basis.

7 **Q. And turning to timekeeping. When you were**
8 **at the private firm, were you under a billable hours**
9 **type of a system where you would track time, you**
10 **know, in either five-minute increments or by task or**
11 **10-minute increments?**

12 A. Yes.

13 **Q. And so you have some experience with that**
14 **timekeeping -- or timekeeping to that extent?**

15 A. Yes.

16 **Q. Since being the district defender, it's my**
17 **understanding that the public defender system has**
18 **gone through periods of tracking time.**

19 A. Yes.

20 **Q. Aside from yourself, was there anyone else**
21 **who was tracking or managing how the attorneys were**
22 **tracking time while you were in the timekeeping**
23 **periods?**

24 A. I'm not sure how that information was
25 used. When we were tracking time, we -- everyone in

1 they have three cases -- what I would call three
2 cases, that's because they have three different case
3 numbers assigned to the court, there are three
4 separate cases. So that's when we open a case
5 for -- if an individual has multiple charges filed,
6 then they have multiple cases in my office.

7 **Q. Are you aware of the Chapter 600.063**
8 **motion for caseload conference?**

9 A. I'm aware of it. We have not utilized
10 that.

11 **Q. And is there a particular reason why you**
12 **haven't utilized that, or is the reason because you**
13 **sent the letters and the issue was resolved shortly**
14 **thereafter?**

15 A. Well, we haven't -- I don't -- in my
16 opinion, I don't believe we have got to that point
17 where we would do that. I can't predict what the
18 future will bring, but it -- but I did not do that
19 initially because I wanted -- we were trying to
20 handle it, I suppose, informally with the courts.

21 **Q. How many times have you as a district**
22 **defender been judicially determined to have provided**
23 **ineffective assistance of counsel?**

24 A. I don't think I have yet.

25 **Q. And do you have a sense for any of the**

1 attorneys that you've supervised while being a
2 district defender have been judicially determined to
3 have provided ineffective assistance of counsel?

4 A. I know that Robert Flemming has. I don't
5 believe any -- and none of the other lawyers in my
6 office have had that determination made yet.

7 **Q. And Mr. Flemming was the person who has**
8 **the most experience aside from yourself?**

9 A. Yes.

10 **Q. You're also tasked with managing the**
11 **budget overall of your district; is that correct?**

12 A. That's not correct.

13 **Q. That's not correct. Have you ever run out**
14 **of money that's been -- I don't know if appropriate**
15 **is using the appropriate word, word but it's been**
16 **given to your district?**

17 A. I don't know. I have -- I know we track
18 the office budget, and to the best of my
19 recollection, we've never ran over, but I really --
20 certain items like phones and those type of
21 things -- I mean, I don't have any control over
22 that -- those budget amounts. So I suppose it could
23 be a possibility that those went over budget.

24 **Q. And you've never had to request a**
25 **supplemental budget to get through the fiscal year?**

1 or from the state office?

2 A. There's not --

3 **Q. Let me ask you -- do you get any cash?**

4 A. No. There's -- no money comes into our
5 office. No funds -- any funds that are expended by
6 our office I -- such as depositions, expert
7 expenses, those type of expenses are reviewed by the
8 attorney that requested them, then reviewed by me
9 and approved, and then those bills are sent to
10 the -- to the -- as I call it, the home office, and
11 they're reviewed by management and then paid out of
12 there. We have -- the local office has no funds
13 with which they pay for anything.

14 **Q. So to ask if you ever run out of funds,**
15 **you may overspend in an item that's allocated to**
16 **you, but you don't have any funds, really, to run**
17 **out of; is that correct?**

18 A. That's a better description than how I
19 described it, yes. We have no funds to run out of.

20 MS. SHIPMA: Okay. Thanks.

21 REDIRECT EXAMINATION

22 BY MR. SCHERZER:

23 **Q. I just have a couple of questions,**
24 **Mr. Guinn.**

25 In terms of the indigency determinations,

1 A. No. No.

2 MR. RAMSEY: No further questions.

3 CROSS-EXAMINATION

4 BY MS. SHIPMA:

5 **Q. I just have a couple of ...**
6 **Ed, so what does your local office budget**
7 **cover? What items are included in that?**

8 A. Well, telephones, rent, you know, postage.
9 There is a local item for Internet service, there
10 is -- I mean, that budget is compiled by, I believe,
11 Kathy Lear, and that's based on, I think, historical
12 numbers. And most of it is items that I have no --
13 the local office doesn't have any control over
14 because they're -- I don't want to use the word
15 "fixed expenses," but they -- rent is a number
16 that -- it is what it is, and it doesn't change with
17 the passage of time.

18 **Q. Okay. And with respect to rent, does the**
19 **county not provide your office space?**

20 A. They do. And I just put -- I'm assuming
21 that the county -- yes. The county pays for it, but
22 I -- you know, I'm assuming that's just part of the
23 overall budget.

24 **Q. Okay. And is there some system whereby**
25 **funds are transferred to your office from Kathy Lear**

1 is it fair to say that time spent -- time that you
2 or your -- the attorneys in your office spend on
3 investigating whether someone has stated their
4 income accurately, as an example, is time that you
5 then couldn't spend on existing client's cases?

6 A. Yeah. I think that's fair to say. I
7 mean, we do not do extra investigation if a client
8 completely fills out the application because that
9 individual is saying that I have accurately stated
10 and completed this -- the information in the
11 application, so I rely on that.

12 **Q. And because -- just by the nature of time**
13 **being a finite measure in this world, we -- any time**
14 **you spend on investigating that is time you could**
15 **not -- you would not spend on --**

16 A. That's true.

17 **Q. -- case work; is that right?**

18 All right. And is the same true for
19 something like depositions? Say, that time spent --
20 that time spent taking a deposition in one case is,
21 of course, time that you -- if you have 79 other
22 cases, is time that you then cannot devote to those
23 cases, at least on that particular day when you're
24 doing a deposition. Is that fair?

25 A. That's true, yes.

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1 Q. So is that one of the calculations that
 2 you need to make -- you and the attorneys in your
 3 office need to make when you're thinking about
 4 whether to do a day-long deposition, for example, is
 5 whether or not that's -- in addition to whether it's
 6 good for that client and that case, whether or not
 7 you're able to do so without harming the other
 8 clients on your caseload or the caseload of your
 9 line attorneys?
 10 A. I think it's a factor. And, again, that's
 11 why we're looking at these case numbers and how many
 12 cases, because we are attempting to avoid the
 13 situation where we neglect one client because we
 14 have too much work to do on another client.
 15 Q. And you said that you -- when you said
 16 that -- I guess that first e-mail to your
 17 line attorneys, that you expected that they would
 18 come to you and say, We have a problem -- that each
 19 of them would come to them, rather than, you know,
 20 two out of the five or -- as it turned out, was that
 21 expectation that each of them would say they had a
 22 problem based on your understanding of their
 23 caseload prior to your sending that e-mail?
 24 A. Well, certainly, I'm always concerned
 25 about the number of cases they had. I thought that

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1 I would hear from the other lawyers because of being
 2 overwhelmed by the court decision or the -- in the
 3 Hinkebein case. I know that they -- the lawyers in
 4 my office all read the opinion and were concerned
 5 that were they measuring up correctly.
 6 Q. Okay. And that was something that was
 7 discussed in the office?
 8 A. Yes. Yes.
 9 Q. Was that directly after the Hinkebein
 10 decision?
 11 A. Yes.
 12 Q. Okay. And how do you know that each of
 13 them read that -- the decision there?
 14 A. Because I printed it off, and they -- each
 15 one of them -- and they had to read it and initial.
 16 Q. Got it. Okay. So you instructed them to
 17 do so?
 18 A. Yeah. Because I suppose I was as -- I
 19 didn't know anything about the Hinkebein case before
 20 that opinion came out, and when I got it and read
 21 it, I was quite frankly very concerned about the
 22 entire situation, and so that's why -- and I was
 23 concerned about the opinion, and I wanted to make
 24 sure that all of the lawyers were aware of it.
 25 Q. You were concerned about it because of

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1 your own concerns about whether the line attorneys
 2 in your office were able to comply were their
 3 ethical obligations?
 4 A. Yes.
 5 Q. And how did you hear about the opinion, if
 6 you recall?
 7 A. I believe the way I heard about it was by
 8 e-mail, either from Greg Mermelstein or Michael
 9 Barrett. I don't remember which.
 10 Q. Okay. And when you -- it sounds like when
 11 you got that, what you're saying, sort of, shortly
 12 after reading that, your immediate concern was, I'm
 13 concerned that the attorneys in my office are not
 14 complying with their ethical obligations?
 15 A. Yes.
 16 Q. Okay.
 17 MR. SCHERZER: That's all of the questions
 18 I have.
 19 VIDEOGRAPHER: The time is 12:02 p.m., and
 20 we're off the record.
 21 (The deposition concluded at 12:02 p.m.)
 22
 23
 24
 25

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1 CERTIFICATE OF REPORTER
 2
 3 I, Lisa Ballalatak, a Certified Court
 4 Reporter for the State of Missouri, do hereby certify
 5 that the witness whose testimony appears in the
 6 foregoing deposition was duly sworn by me; the
 7 testimony of said witness was taken by me to the best
 8 of my ability and thereafter reduced to typewriting
 9 under my direction; that I am neither counsel for,
 10 related to, nor employed by any of the parties to the
 11 action in which this deposition was taken, and further
 12 that I am not a relative or employee of any attorney
 13 or counsel employed by the parties thereto, nor
 14 financially or otherwise interested in the outcome of
 15 the action.
 16
 17
 18
 19 _____
 20 Lisa Ballalatak
 21 Missouri Supreme Court
 22 Certified Court Reporter
 23
 24
 25

32 (Pages 125 to 128)

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1 ALARIS LITIGATION SERVICES
2 2511 Broadway Bluffs, Suite 201
3 Columbia, Missouri 65201
4 Phone: (573) 449-0561 * Fax (816) 221-1151
5
6 December 28th, 2017
7 MS. JACQUELINE D. SHIPMA
8 MISSOURI STATE PUBLIC DEFENDER SYSTEM
9 1000 W Nifong Boulevard, Suite 100
10 Columbia, Missouri 65203
11
12 SHONDEL CHURCH, et al. v. STATE OF MISSOURI, et al.
13 Dear Ms. Shipma:
14 Please find enclosed a copy of the deposition of
15 Edward Guinn, taken on December 12th, 2017, in the
16 above-referenced case. Also enclosed is the original
17 signature page and errata sheet.
18
19 Please have the witness read this copy of the
20 transcript, indicate any changes and/or corrections
21 desired on the errata sheet, and sign the signature
22 page before a notary public.
23 Please return the executed signature page and errata
24 sheet to the Alaris Litigation production department
25 at the addresses listed above within 30 days after
receiving the transcript.

Thank you for your attention to this matter.

Sincerely,

Lisa Ballalatak
cc: Mr. Scherzer

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1 STATE OF)
2)
3 COUNTY OF)
4 I, Edward Guinn, do hereby certify:
5 That I have read the foregoing deposition;
6 That I have made such changes in form and/or
7 substance to the within deposition as might
8 be necessary to render the same true and
9 correct;
10 That having made such changes thereon, I
11 hereby subscribe my name to the deposition.
12 I declare, under penalty of perjury, that
13 the foregoing is true and correct.
14 Executed this ____ day of _____,
15 20____, at _____.
16
17 _____
18 Notary Public
19
20 My commission expires: _____
21
22 _____
23 Edward Guinn
24
25

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1 ERRATA SHEET
2 Witness: Edward Guinn
3 SHONDEL CHURCH, et al. v. STATE OF MISSOURI, et al.
4 Date Taken: December 12th, 2017
5 Page # ____ Line # ____
6 Should read: _____
7 Reason for change: _____
8
9 Page # ____ Line # ____
10 Should read: _____
11 Reason for change: _____
12
13 Page # ____ Line # ____
14 Should read: _____
15 Reason for change: _____
16
17 Page # ____ Line # ____
18 Should read: _____
19 Reason for change: _____
20
21 Page # ____ Line # ____
22 Should read: _____
23 Reason for change: _____
24
25 Witness Signature: _____

33 (Pages 129 to 131)

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